the weekly
Stan d
DECEMBER 25, 2000 • $3.95

COWBOYS AND INDIANS, GERMAN-STYLE
BEN NOVAK

Mr. President

A Second Bush Administration

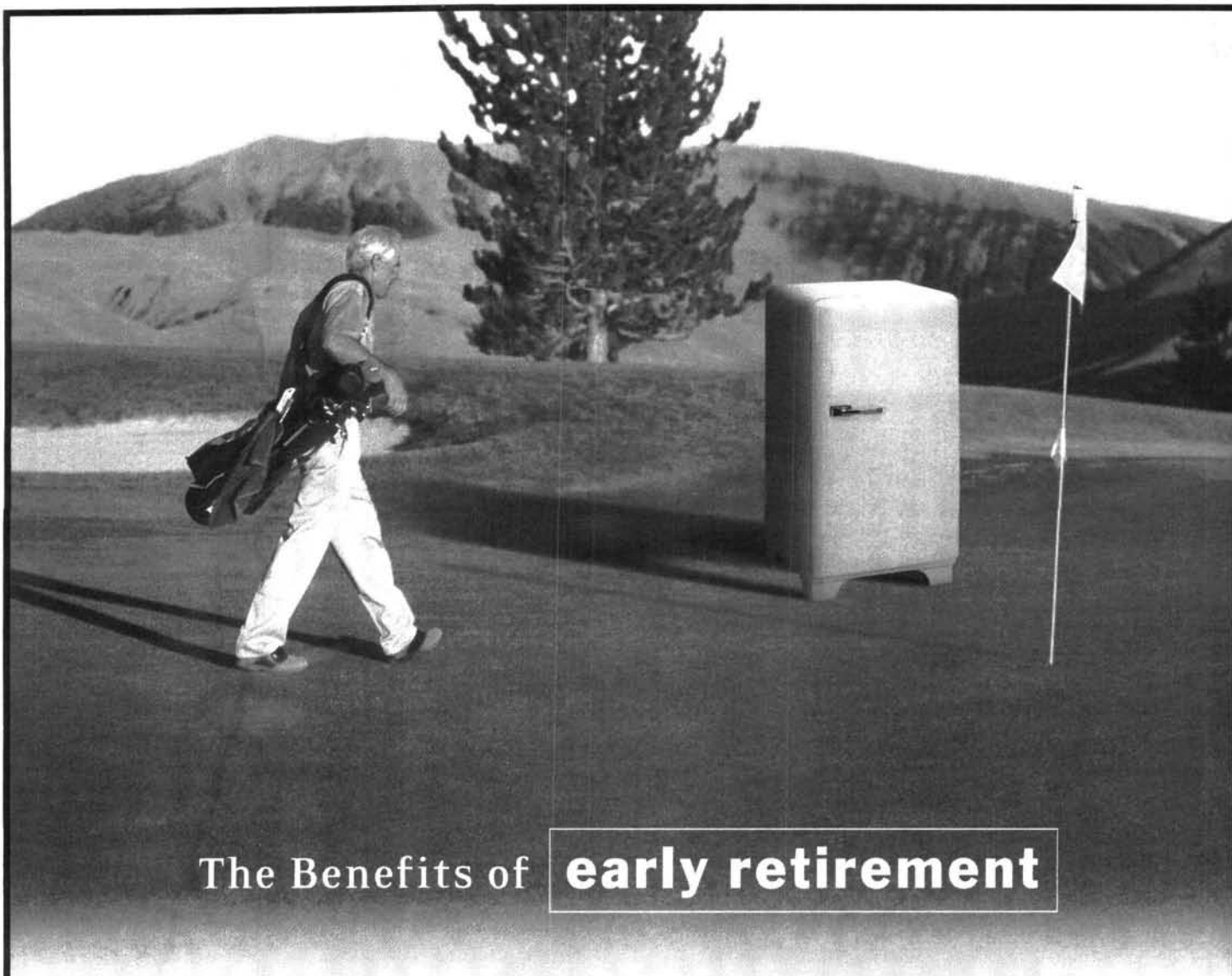
FRED BARNES
ANDREW FERGUSON
MATTHEW REES

WHAT THE COURT HAS WROUGHT

ohn J. Dilulio Jr. • Michael S. Greve
od Lindberg • Nelson Lund • Robert F. Nagel
lichael W. Schwartz • David Tell

#BXNFMVD ****** 5-DIGIT 94301
#UNZ0555B096 1#302604 WK 005562
RON UNZ NOV 11 02 000031
371 BALN 000399
555 BRYANT ST 001
PALO ALTO CA 94301-1704

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED



The Benefits of **early retirement**

Early retirement means more than endless rounds of golf and early bird specials. When it comes to appliances, early retirement of older, less efficient models can save consumers money and help reduce the greenhouse gas emissions that contribute to climate change.

According to a new study by the Pew Center on Global Climate Change, major home appliances account for about 10% of the nation's electricity use and related greenhouse gas emissions.

Smart public policies can encourage consumers to replace their old appliances with newer, more efficient models benefiting both the consumer and the environment.

So the next time you're contemplating an early retirement, remember: aging appliances deserve one, too.

For more information on the benefits of early retirement, please visit our website at
www.pewclimate.org

PEW CENTER ON Global CLIMATE CHANGE

The Pew Center on Global Climate Change is a non-profit, non-partisan and independent organization dedicated to providing credible information, straight answers and innovative solutions in the effort to address global climate change.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Contents

December 25, 2000 • Volume 6, Number 15

2 Scrapbook... *Hollywood emigrés, biased judges, and more.*
4 Casual..... *Victorino Matus, cabin boy.*
6 Correspondence..... *On judicial supremacy, Gore, etc.*
9 Editorial..... *The Bush Victory*

Cover: Drew Friedman

Articles

12 The Second Bush White House
The model is Gerald Ford's "spokes of the wheel," not Bush I...... BY FRED BARNES

13 Nice Guys Finish as Chief of Staff
The amiable Andrew Card is competent—but above all, a Bush loyalist..... BY ANDREW FERGUSON

17 The Long Arm of Colin Powell
Will the next secretary of state also run the Pentagon?..... BY MATTHEW REES

19 An Act of Courage
Under Rehnquist's courage, the Court did the right thing...... BY NELSON LUND

20 From *U.S.* v. *Nixon* to *Bush* v. *Gore*
Political problems deserve political solutions...... BY ROBERT F. NAGEL

23 Al Gore's Legal Doomsday Machine
All those lawyers on Team Gore ended up litigating their way to defeat...... BY TOD LINDBERG

25 Equal Protection Run Amok
Conservatives will come to regret the Court's rationale for Bush *v.* Gore.... BY JOHN J. DIIULIO JR.

26 The Secret of Footnote 17
The Florida Supreme Court finally responded, but no one noticed...... BY MICHAEL W. SCHWARTZ

Features

28 The *Real* Division in the Court *The Court's different views of federalism.*..... BY MICHAEL S. GREVE
32 After the Bursting of the Dot-Com Bubble *Maybe not a depression.*..... BY IRWIN M. STELZER

Books & Arts

35 Cowboys *und* Indians *Karl May's Teutonic American West.*..... BY BEN NOVAK
38 Disappearing Genius *The strange life of Leon Theremin—inventor, musician, spy.*..... BY RICHARD KOSTELANETZ
40 Stalin's Agents *None dare call it spying.*..... BY ROBERT D. NOVAK
42 Liberal Arts *Lynne Munson on the decline and fall of the National Endowment for the Arts.*... BY MARGARET HILDEBRAND
44 Not a Parody..... *Laurence Tribe's personal website.*

William Kristol, *Editor and Publisher* **Fred Barnes,** *Executive Editor*
David Tell, *Opinion Editor* **David Brooks, Andrew Ferguson,** *Senior Editors* **Richard Starr, Claudia Winkler,** *Managing Editors*
J. Bottum, *Books & Arts Editor* **Christopher Caldwell,** *Senior Writer* **Victorino Matus, David Skinner,** *Associate Editors*
Tucker Carlson, Matt Labash, Matthew Rees, *Staff Writers* **Kent Bain,** *Design Director* **Katherine Rybak Torres,** *Art Director*
Jonathan V. Last, *Reporter* **Jennifer Kabbany, Edmund Walsh,** *Editorial Assistants* **Jan Forbes,** *Production Manager*
John J. DiIulio Jr., Joseph Epstein, David Frum, David Gelernter, Brit Hume,
Robert Kagan, Charles Krauthammer, P. J. O'Rourke, John Podhoretz, Irwin M. Stelzer, *Contributing Editors*
David H. Bass, *Deputy Publisher* **Polly Coreth,** *Business Manager*
Nicholas H.B. Swezey, *Advertising & Marketing Manager* **John L. Mackall,** *Advertising Sales Manager* **Lauren Trotta Husted,** *Circulation Director*
Doris Ridley, Carolyn Wimmer, *Executive Assistants* **Tina Winston,** *Accounting*
Ian Slatter, *Special Projects* **Catherine Titus, Davida Weinberger,** *Staff Assistants*

the weekly Standard

THE WEEKLY STANDARD (ISSN 1083-3013) is published weekly (except the last week in April, the second week in July, the first week in September, and the second week in January) by News America Incorporated, 1211 Avenue of the Americas, New York, NY 10036. Periodicals postage paid at New York, NY, and additional mailing offices. Postmaster: Send address changes to THE WEEKLY STANDARD, P.O. Box 96127, Washington, DC 20077-7767. For subscription customer service in the United States, call 1-800-274-7293. For new subscription orders, please call 1-800-283-2014. Subscribers: Please send new subscription orders to THE WEEKLY STANDARD, P.O. Box 96153, Washington, DC 20090-6153; changes of address to THE WEEKLY STANDARD, P.O. Box 96127, Washington, DC 20077-7767. Please include your latest magazine mailing label. Allow 3 to 5 weeks for arrival of first copy and address changes. Yearly subscriptions, $78.00. Canadian/foreign orders require additional postage and must be paid in full prior to commencement of service. Canadian/foreign subscribers may call 1-850-682-7653 for subscription inquiries. Visa/MasterCard payment accepted. Cover price, $3.95. Back issues, $3.95 (includes postage and handling). Send manuscripts and letters to the editor to THE WEEKLY STANDARD, 1150 17th Street, N.W., Suite 505, Washington, DC 20036-4617. Unsolicited manuscripts must be accompanied by a stamped, self-addressed envelope. THE WEEKLY STANDARD Advertising Sales Office in Washington, DC, is 1-202-293-4900. Advertising Production: Call Ian Slatter 1-202-496-3354. Copyright 2000, News America Incorporated. All rights reserved. No material in THE WEEKLY STANDARD may be reprinted without permission of the copyright owner. THE WEEKLY STANDARD is a trademark of News America Incorporated.

BPA INTERNATIONAL

www.weeklystandard.com

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Al Gore's Attack Judge

The morning of the Supreme Court's ruling in *Bush* v. *Gore*, the *New York Times* trotted out the story of Clarence Thomas's potential "conflict of interest."

Thomas's wife, Virginia, works at the Heritage Foundation, and she's involved in a project sorting the résumés of low-level, conservative wannabe Bush administration staffers. So Virginia Thomas stands to gain . . . well, THE SCRAPBOOK's not sure what exactly she stands to gain, but that hardly matters. Thomas, the *Times*'s source was quite sure, should have recused himself from deciding on *Bush* v. *Gore*. Which would have reduced the presumptive pro-Bush faction of the court to four justices. And since Clarence Thomas didn't so recuse himself, why then he violated . . . well, THE SCRAPBOOK's not sure about that, either.

But this was the substance of the complaint that the *Times* reported. The allegation of the conflict was made by a certain Gilbert S. Merritt of Nashville, Tennessee, who thinks "some kind of investigation in the Senate" of Thomas would be in order. Concurring in Merritt's judgment, the *New York Times* quoted . . . well, nobody. Nor did the *Times* quote any of the legal experts one would normally expect to see in such a story. We have only Merritt's opinion to go on.

In fairness, THE SCRAPBOOK must point out that Merritt is hardly a nobody. He's a judge on the Sixth U.S. Circuit Court of Appeals. But it is precisely Merritt's qualification to pronounce on such a matter of judicial ethics that makes the pronouncement irregular. A federal appellate judge doesn't accuse a Supreme Court justice of misbehavior every day, after all. Especially not when the remedy the appellate judge proposes might directly benefit him. We can't see why the *Times* ran so one-sided a story at all, but we'll credit them at least for not omitting this key fact: "Judge Merritt . . . has long association with the Gore family and was considered a leading contender for the Supreme Court early in the Clinton administration."

Then there's this. Gore campaign dissembler Mark Fabiani made a brief appearance in the Thomas story. The vice president is too classy and responsible a guy to go near such a controversy, Fabiani intoned: "The vice president has the highest regard for the independent judiciary, so we're not going to comment on the various questions that have been raised." Raised under what circumstances, one wonders? These circumstances, the *Times* made clear way down at the bottom of its story. "Judge Merritt offered his views about Justice Thomas after someone in the Gore campaign provided the *New York Times* with his name and telephone number."

Judge Merritt himself would seem ripe for "some kind of investigation in the Senate," don't you think? ♦

Before We Move On . . .

While the country looks forward to being united, not divided, by the Reformer with Results, THE SCRAPBOOK has to resolve some unpleasant housekeeping matters. According to our records, several celebrities vowed to vacate the country if George W. Bush was elected. We feel we must hold them to their promise.

The temptation of course will be to repair to some place tropical, to which we say: Resist. Most equatorial paradises rely on American tourism dollars. To properly nurse one's anti-American animus, one must move to France. There are disadvantages, of course, to living in France (the French live there, for one). But where else can one enjoy licorice-flavored cocktails, infrequent bathing, and Mickey Rourke movies that haven't gone straight to video?

It's settled, then. Off to France with the following:

***Robert Altman**. The crotchety director has already selected France as his destination if Bush won, to which we say, *à la prochaine, Robert*. Altman's movies of late have become downright silly. (Anyone catch *Prêt-à-Porter*? Didn't think so.) In addition to being silly, did we mention pretentious, formless, and badly in need of editing? All of these mean he'll do in France what he's never done in America: good box office.

***Alec Baldwin**. In the pantheon of the Baldwin brothers, Alec used to be known as the Talented Baldwin. But after a string of mediocre movies and a lack of quality time with the StairMaster, he is now simply Tubby Baldwin. Earlier this year, Baldwin's wife, Kim Basinger, told *Focus* magazine that Alec would become an expatriate if Bush became president. Alec said the claim was hogwash (and perhaps not coincidentally, the *Star* tabloid now has the two on the verge of divorce). Helpful suggestion for Alec: Leave your hot wife here and go to France, where you'll have four years to find a decent script and work off some of that water retention.

***Eddie Vedder.** The grimacing Pearl Jam singer, who promised *USA Today*

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

he'd leave the country if "little Damien II gets elected," will especially enjoy France's no-bathing culture. As they say on the Riviera, Eddie: "Don't let the door smack your *cul* on the way out."

***Barbra Streisand**. Strictly speaking, Streisand didn't promise to leave this time. She did, however, vow to leave in 1992 if "George Bush" won the election, and we don't want to disqualify her on a hyper-technicality. We trust Ms. Streisand's offer is still good.

To assist our celebrity friends, we've researched flight information. If you fly Swissair out of JFK airport on the first of the year, you can get dinner and a snack in business class for the reasonable one-way fare of $2,992.24.

Of course, you're always welcome to come back and fight, but for now, it's time to do what the French do best: surrender. ♦

The Battle for Capitol Hill

A group of House Republicans will be meeting behind closed doors this week to choose the new chairmen of a number of committees. One of the most important races will determine who succeeds John Kasich as Budget Committee chairman. Seeking the top job are Saxby Chambliss, Jim Nussle, Nick Smith, and John Sununu (son of the former New Hampshire governor). Smart money says the top two are Chambliss and Nussle.

Chambliss has been serving as the committee's vice chairman and functioned as chairman for much of the past two years—first while Kasich was running for president and, later, when Kasich was focusing on his post-congressional career (he did not seek reelection). Chambliss also enjoys good relations with the Appropriations Committee—a famously difficult bunch—and raised $500,000 for his colleagues this year. (Nussle, despite sitting on the Ways and Means Committee, where members are showered with campaign contributions, raised just $151,000.)

Nussle, famous for once appearing on the House floor with a paper bag over his head, has been trying to boost his prospects by telling colleagues, and reporters, that he's the most senior member of the committee. He's not; that distinction belongs to Nick Smith. Still, if House speaker Denny Hastert blesses Nussle, it will be because of seniority and would mark a return to pre-Newt traditions in the House. ♦

"Eat," They Ordered

China is cracking down on fasting in East Turkistan, the province where Muslim Uighurs who chafe at Beijing's dictates are now trying to observe the prescribed fasts of the Muslim month of Ramadan. In the name of "public health," schools have arranged mandatory lunches for Uighur students, and businesses are demanding that their Uighur employees not fast.

Beijing, a colleague mordantly comments, has, in its rush to modernize, skipped liberalism and moved directly to secularism. ♦

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Casual

It's All Downhill from Here

Most people's idea of getting away from it all is to vacation on some Caribbean island, go on a cruise, get a tan. But my favorite getaway is upstate New York in the bitter cold of December. In Schoharie County, way up in the Catskill Mountains, sits a log cabin my friend Steve's grandfather built 30 years ago. It's situated on a hillside clearing, looking down on an open field, with not a soul in sight. When we were in high school and college, my friends and I would go there for a week, pretend we were pioneers, and rough it without electricity, phones—even television.

Gas powers a few lamps as well as the oven. Warmth comes from a stone fireplace and a potbelly stove. That's it. If we forget to stoke the fires every few hours through the night, we freeze. There's a bathroom with a shower and a toilet, but as teenagers, none of us really quite knew how to operate the generator to make any of this work. Hence, when nature called, we went to nature. No one took a shower—the water's ice cold. This might not sound too appealing, but it gets better.

Because it was just the guys, we ate and drank whatever we wanted. Early on, this meant franks and beans and whatever we found in the kitchen cabinets. We tried sipping on Sambuca, that licorice-laced cordial resembling lighter fluid, and some of us even acted as if we enjoyed it. Steve's grandfather had a collection of tobacco pipes which we eventually got the hang of. We would spend hours playing cards—mostly hearts, which meant mostly yelling and screaming at each other—and talking about girls and school and college.

Hiking was always an adventure. There's a beaver dam nearby, and next to it is a frozen pond we would walk on, wishing one of us would fall in. Occasionally, we'd stumble across fresh paw prints and hope they would lead us to a black bear, though none of us would have known what to do if they had. Steve's advice was grim: If you meet a bear, run up a hill because bears are slower going uphill (aren't humans too?). If you're trapped, play dead. The bear might take a swipe at you, but as long as you remain lifeless, it will eventually move on.

Another highlight was sledding down Suicide Hill—a steep mountain slope that all of us would ride down to the bottom on a wooden toboggan. It was suicide because you traveled at high speed and because the only way you could stop was by crashing. There was always a fear that eventually someone would break something. And eventually someone did—a hairline fracture to an upper arm. Not that this stopped us from further sledding.

After the hikes, we would return to the cabin, smoke pipes, play cards or chess, read, and nap. Then we'd make dinner and around midnight go back out for another hike. On a clear night, you could see the Milky Way and hear only the stream, the wind, and the coyotes.

That's what we loved about the cabin trips. That and the independence from adults. We had to do everything ourselves and make sure no one got hurt. We would get home stinking and looking like hobos. But we always felt relaxed, refreshed, and ready for school. It was better than a spa.

Which is why I so looked forward to my return to the cabin last week, along with four friends, after a six-year hiatus. We've changed in six years. None of us is in college anymore. All of us have jobs except Steve who is studying to become a doctor. And much as we try to ignore it, our age is catching up with us: On the third run down Suicide Hill, one of the guys seriously injured his leg and limped the rest of the trip (he's getting X-rays this week). Another pulled his back while trying to start the generator. Two announced they are getting engaged to their girlfriends this month.

But for those five days, you'd have thought time had stood still. The cabin itself is unchanged, but for a new mounted deer head on the wall (taken by Steve's grandfather and dedicated to his late brother, whose ashes were scattered nearby). We played round upon round of hearts, smoked the old pipes, and told the same crude jokes. We finished almost two dozen eggs and four giant cans of corned beef hash (which I cooked proudly, using butter to grease the skillet and throwing in a little tabasco sauce) all in two days. Another morning, we finished a box worth of pancakes and a few pounds of smoked sausages, which one of us rolled up into a sort of "pig-in-a-comforter."

Alas, we could kid ourselves only so long. Inevitably, we had to pack up our things, clean up our mess, and return to our normal lives. Soon we'll be going to the engagement parties, then the weddings. But we all promised to return someday to the cabin. And we promised not to bring our wives.

Victorino Matus

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

History as you've never seen it:

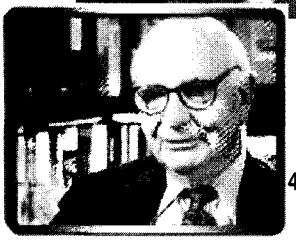
Watch *The First Measured Century* on PBS

Wednesday, December 20th, 8:30—11:30 PM (check local listings)

1

2

3



4

We've heard the anecdotes: Lindbergh, Elvis, Hiroshoma, astronauts, OJ. Now host-essayist Ben Wattenberg explores America by the numbers. How did George Gallup win the biggest bet in social science history? Did Alfred Kinsey get it right? Does the "Moynihan Report" hold up? Did Frederick Jackson Turner close the frontier and miss the message? Is Paul Volcker the Godfather of the New Economy? Was Betty Friedan the cause or the effect? Watch history as you've never seen it, featuring interviews with Milton Friedman, Daniel Yankelovich, Alan Brinkley, David Kennedy, Moynihan, Friedan, Volcker, and many more.

1 Daniel Patrick Moynihan **2** Alfred Kinsey **3** Frederick Jackson Turner **4** Paul Volcker

2-cassette video version ($29.98) available from PBS Home Video: 1-800-Play-PBS
Learn more online at www.pbs.org/fmc

Read "The First Measured Century: An Illustrated Guide to Trends in America, 1900—2000," the reference book for this Wednesday's PBS special, featuring photographs, 209 color charts, and new "Middletown IV" research.

Available wherever books are sold • Hardcover, $50, or quality paperback, $20

AEI The AEI Press • Washington, DC

Distributed to the book trade by Publisher Resources, Inc.

Invest With Confidence® T.RowePrice

Pfizer

Think TANK With BEN WATTENBERG

PBS

Funding for *The First Measured Century* was provided by T. Rowe Price, Pfizer, Inc., the Lynde and Harry Bradley Foundation, the John M. Olin Foundation, the Bernard & Irene Schwartz Foundation, the Smith Richardson Foundation, the D & D Foundation, PBS, and the Corporation for Public Broadcasting.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Courtly Conservatives

Why must William Kristol and Jeffrey Bell slander "economic conservatives" in their article "Against Judicial Supremacy" (Dec. 4)? Most of the folks I've read attacking the lawlessness of the courts *are* economic conservatives—many of whom acquired much of their understanding of the significance of the rule of law from none other than the economist and political philosopher Friedrich Hayek (perhaps the most important writer on the rule of law in the last 100 years).

The list of individuals participating in public debate under the influence of Hayek (or working on the shoulders of Hayek) is almost limitless, including Thomas Sowell, Robert Bork, George Will, Rush Limbaugh, and William Buckley. If these folks aren't among the "economic conservatives," one wonders who the "economic conservatives" might be.

An insight common to all of these folks is the one Hayek most fully articulated in his landmark *The Road to Serfdom*: A free, civil, and just society is one in which the actions of the rulers are restrained within the bounds of the inherited institutions of law, and cannot be one in which the arbitrary discretion of men in power is allowed to run riot.

Greg Ransom
Aliso Viejo, CA

I enjoyed William Kristol and Jeffrey Bell's "Against Judicial Supremacy," particularly given Al Gore's early conviction that he won the election. In fact, when the margin of error in an election exceeds the margin of victory by an order of magnitude, the election is a draw. The Florida legislature should take the stance that the people have spoken and that the result was uncertain.

While most citizens do not have a background in statistics, they can certainly understand that either campaign might "win" depending on which votes are or are not allowed, or depending on how ballots are interpreted. It is wholly appropriate that the legislature chooses the electors in the event of a draw. Gore's assertion that the election was not a draw acknowledges that the legislative branch acting to break the tie—as authorized by law—could have been an academically sensible road to a final outcome.

Jay Hopman
Cameron Park, CA

In "Against Judicial Supremacy," William Kristol and Jeffrey Bell once again raise the conservative battle cry against "activist" courts. They quote approvingly from Gov. Bush's statement that "writing laws is the duty of the legislature, administering laws is the duty of the executive branch." What

Bush, Kristol, and Bell fail to articulate is a role for the judicial branch. Bush ignores it completely, while Kristol and Bell hint that there may be an appropriate role for the judicial system other than punishing felons, but don't offer any guidance as to how the judiciary should rightfully interact with the legislature and the executive.

I fear that the authors' viewpoint is directed more at their political adversaries and at results that are disagreeable to them than at elucidating an institutional role for the judicial branch.

For instance, do they believe that *Marbury* v. *Madison* was decided correctly and that the federal courts should indeed have the authority to determine whether an action of the legislative or executive branch violates the Constitution? If so, what is the source of that power? It is not specifically enumerated in the Constitution, and thus a consistent strict-constructionist view would seem to lead one to the conclusion that the courts have no such authority. I think, however, that most Americans would be very uncomfortable with the notion of unbridled legislative and executive power.

David R. Wilson
Seattle, WA

Into the Mystique

James K. Glassman's review of Bob Woodward's book on Alan Greenspan echoes Woodward in downplaying the role of the Republican Congress in restraining government spending, creating a surplus, and allowing the Fed to use monetary policy to keep the economy on a growth path ("The Greenspan Mystique," Dec. 11).

Like the dog that didn't bark in Sherlock Holmes mysteries, no mention is made of the Clinton budgets with $200 billion deficits as far as the eye could see—deficits that were not permitted by the Republicans (and conservative Democrats). Woodward and Glassman give us only the Clinton/Greenspan version of monetary history. It's not the whole story.

Morton Lurie
Raleigh, NC

Truth, Justice, Etc.

Noemie Emery, with her usual clarity and grace, says all that needs to be said in "First Principles in Florida" (Dec. 11). Her article should be required reading for every citizen who wants to vote. But what she describes needs a name. I submit that we are watching our first outcome-based election.

Through 50 years of public education, and with the cooperation of a sympathetic media, the Democrats have managed to produce a voter base that believes feelings are knowledge, opinions are truth, and all sincerely held

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

ADVERTISEMENT

WANTED:

"Drug Czar"

Director of Office of National Drug Control Policy

Responsible for $20 billion budget. Cabinet position reports directly to the President.

Experienced in field of public health. Understands that most users are not addicts and are otherwise responsible citizens; and that drug abuse is a health problem that is not effectively treated by incarceration.

Integrity to objectively analyze and publicly endorse peer reviewed scientific evidence regardless of political pressures. Examples are marijuana as a safe and effective treatment of certain serious illnesses and funding syringe exchanges to combat the rapid spread of HIV/AIDS.

Courage to speak out against drug war ideologues, racists, political opportunists and entrenched interests such as the prison-industrial complex and the drug testing industry. Willingness to resist demonizing illegal drug users, many of whom are good parents, good workers, and good citizens.

Honesty to publicly acknowledge that some illegal drugs, such as marijuana and Ecstasy, are safer than some legal drugs like alcohol and tobacco.

Receptive to studying new approaches pioneered in Australia, Canada, Holland and Switzerland and in the states of Arizona, California, Hawaii, Maine and Nevada that expand drug treatment, reduce the spread of disease, allow access to medicine and decrease reliance on law enforcement.

Understands basic economic principles of supply and demand. Will avoid unjustified intervention in sovereign countries in the Quixotic effort to stem supply. Will replace current prohibition of relatively benign marijuana and Ecstasy with regulations and taxes similar to those for alcohol and tobacco.

$125,000 per year, excellent benefits.
Opportunity to make a real difference.
Apply with resume to President of the United States
The White House

American Public Health Association, Mohammad N. Akhter, MD, MPH, Executive Director;
Common Sense for Drug Policy, Kevin B. Zeese, President;
National Black Police Association, Ronald Hampton, Executive Director;
United Methodist Church, General Board of Church and Society, The Rev. Dr. Thomas White Wolf Fassett.

For information contact **Common Sense for Drug Policy,**
Kevin B. Zeese, President, 3220 N Street NW #141, Washington, DC 20007
703-354-9050 or visit www.csdp.org

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

opinions are equal. These people decide how to vote according to whim or fancied self-interest, either of which can be guided by the manipulation of language, which these voters seem to have neither the will nor the ability to analyze. Worst of all, in Tallahassee, the Florida Supreme Court tries to figure out how it can apply the standard of fairness to feelings and emotions, while ignoring it in the areas of law, truth, and justice.

JERRY SWEERS
Lexington, KY

THE GOP IS FLYING HIGH

AFTER READING Fred Barnes's "Call It the Flyover Party" (Dec. 4), my initial reaction to the accompanying electoral map was that areas of Bush support have the highest growth rates in the country. It is not clear whether the growth index listed with the map measures population growth, or economic, but the red counties on the map clearly include regions such as the South Carolina coast and upcountry that are among the fastest growing areas in America, both in population and wealth, and it appears at first glance that this is true around the country as well.

Given that, and assuming that the population and economic trends of the recent past continue through the next four, eight, or twelve years, we can expect the population and wealth of the red counties to increase, while those of the Gore counties will decrease. If that occurs, Republicans would benefit.

JIM CAHALAN
Georgetown, SC

WAR PARTIES

NEARLY EVERY LINE of David Tell's "The War over Gore" resonated with me (Dec. 11). I would like to think that political discourse can proceed from legitimately different values, governed by a mutual regard for logic. If ever that ideal existed, it has been scarce of late, and David Tell makes an eloquent appeal for its restoration.

In the interests of comity, I would acknowledge that conservatives have not been blameless when it comes to principled consistency. But at least they care about it, and that is a distinction that serves us well, and one we should nurture.

DOUG JORDAN
Washington, DC

DAVID TELL'S EDITORIAL "The War over Gore" begins with a lengthy lament over the tendency for political debate to be regarded simply as one party opposing another without reference to the substantive merit of the arguments. He writes that "the justice of a man's particular case has everything to do with what exactly he says and does about it," not with his ideology or political party.

Later in the editorial, Tell criticizes the position taken in court by Florida attorney general Bob Butterworth, but the only "argument" against Butterworth's position is that he was "Florida chairman of the Gore campaign."

Liberal or conservative, Republican or Democrat, that's inconsistent.

DANIEL H. LOWENSTEIN
Professor
UCLA Law School
Los Angeles, CA

DAVID TELL RESPONDS: It is a convention of modern journalism to alert readers that some referenced individual is an interested party in whatever controversy is under discussion. In Bob Butterworth's case, I have simply followed that convention. Honest political debate does not require that we pretend people aren't who they are. It does require, it seems to me, that no man's position be dismissed exclusively by reference to his identity and associations.

On that score, I would be forced to confess the hypocrisy Prof. Lowenstein charges . . . had he not mischaracterized what I've written. Butterworth's role in the Gore campaign tells us exactly nothing about the quality of his presentation to the Florida Supreme Court, and I nowhere suggested otherwise. What I spent several paragraphs criticizing, instead, was the attorney general's misleading advice to the court about the length of time necessary to complete manual recounts in his state's largest counties. This, in fact, was the "only argument" I used against Butterworth. I'm surprised Prof. Lowenstein missed it.

ARMED SERVICES COMBAT

MATTHEW REES'S STORY on congressional committee chairmanships left out one of the most interesting and important battles ("The Other Post-Election Struggle," Dec. 4).

The struggle for the House Armed Services Committee has become particularly fierce with the end of Rep. Floyd Spence's (S.C.) three terms. Three members have a shot at the job. Rep. Curt Weldon (Pa.), one of the most outspoken critics of the Clinton administration's defense policies, has waged a vigorous public campaign to jump the seniority ladder for the chairmanship. Rep. Bob Stump (Ariz.), the chairman of the House Veterans Affairs Committee, is next in line in seniority after Spence and wants the job. Rep. Duncan Hunter (Calif.), who is ahead of Weldon in seniority but is backing Stump, said he should get the nod if the Republican Conference does not tap Stump.

The outcome of this dogfight will set the tone for the GOP's approach to "rebuilding the military"—a familiar refrain from the recent presidential campaign.

JOHN ROBINSON
Managing Editor
Defense Daily
Arlington, VA

• • •

THE WEEKLY STANDARD
welcomes letters to the editor.
Letters will be edited for length and clarity and must include the writer's name, address, and phone number.
All letters should be addressed:
Correspondence Editor
THE WEEKLY STANDARD
1150 17th St., NW, Suite 505
Washington, DC 20036.

You may also fax letters: (202) 293-4901
or e-mail: Editor@Weeklystandard.com.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

the weekly Standard

The Bush Victory

We have no trouble conceding that Al Gore's was an especially generous and gracious speech last Wednesday, in which the vice president conceded that he'd lost this year's election. All indications are, however, that Gore's supporters still cannot bring themselves to concede that George W. Bush actually *won* the election fair and square. All indications are, quite the contrary, that the any-more-than-fig-leaf legitimacy of Bush's victory is the one thing Gore's proponents remain quite intent to deny. They continue to insist, instead, that the vice president's extraordinary five-week post-election effort to thwart his opponent's claim on the White House was the soul of righteousness.

A righteousness so absolute, in fact, that in its defeat a vocal army of irredentist Goreophiles are now prepared to perceive a deep wound to the very idea of America. Their statements fill the front pages of the newspapers, and their op-eds fill the back. The manner in which George W. Bush will have acceded to the presidency is "contemptible." It is "immoral." It represents an abject "defiance of justice and common sense" and a "terrible venture away from the territory of democracy." And so forth.

In our view, this goes well beyond the merely delusional and far, indeed, into genuine irresponsibility, for many of the people making these claims are smart—smart enough to know better. As is the vice president himself. And yet he more than anyone has acted to encourage such furious derision of the nation's electoral decision-making. And so, given that the derision is being promoted on his behalf, he more than anyone should be expected to repudiate it. Which he has not done, and appears unwilling to do. For this reason, Gore's long-delayed fifteen minutes of gentlemanliness last Wednesday seems not enough to us.

It bears reviewing here, once again, what bizarre distortions of tradition and law and logic the vice president's attorneys, acting of course under his authorization and direction, have proposed and accomplished in Florida these past five weeks. Gore finished second in that state's initial November 7 voting tally. Gore finished second in that state's automatic machine recount over the next few days. Gore would have finished second on November 14, Florida's statutory deadline for state certification of county-by-county returns. But three of the four counties whose election night numbers Gore had "protested" were not yet finished with their resulting recounts, so Gore's lawyers sought and secured a novel Florida Supreme Court "interpretation" of state law: The state's statutory seven-day deadline was meant to be nineteen days long.

By the time the nineteenth of these seven days arrived, Miami-Dade County had suspended its recount, Palm Beach County had still not completed its own, and the U.S. Supreme Court had unanimously vacated their deadline extension in any case—with a warning to the Florida court that it must be careful not to encroach on the state legislature's constitutionally derived plenary authority to determine how presidential electors should be chosen. Secretary of State Katherine Harris moved at last to certify the Florida popular vote. Al Gore was again in second place.

At which point he requested, and received from the Florida Supreme Court, a fifth opportunity to win. Elections in Florida work essentially as follows, David Boies informed the justices: State law requires tabulating machines to reject as invalid any ballot cast contrary to explicit instructions given every voter. State law nevertheless assumes that these machines, in the successful performance of this duty, will thereby produce an illegal result—for among the ballots they are required to reject will be ballots on which an "intent of the voter" can sometimes be magically discerned. And while state law might appear to have arranged for this "intent" to be ignored from the gitgo, way down deep the law cherishes it as necessary to democracy, and consequently hunts it to the ends of the earth. At least in a close election, that is, when the discretionary county-level manual recounts provided for by statute become mandatory, even though no one has ever realized it before.

The argument was ridiculous on its face, but a 4-3 majority of the Florida high court bought it anyway. Their earlier opinion had been entirely rejected by the U.S. Supreme Court. No matter: This subsequent ruling baldly reaffirmed, without comment, those portions of the rejected opinion most favorable to Al Gore's designs. The Florida court's earlier opinion had endorsed a construction of state law in which officially certified election tallies were accorded paramount importance in the determination of a winner. No matter there, either: This subsequent ruling rendered official certification a practical nullity—again, to Al Gore's advantage. The Tallahassee majority ordered revised tallies from three heavily Democratic counties included in Florida's running total, though none of these numbers had ever

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

been properly certified by the state. Results that *had* already been properly certified in Florida's 64 other counties, the state Supreme Court now pronounced presumptively invalid, subject to a manual review of the "undervote" in each. A review to be conducted by it doesn't really matter who, and according to interpretive standards (a chad here, a dimple there) invented on a case-by-case basis.

Last Tuesday, December 12, this ghastly plan, Gore's *sixth* grab for Florida's electoral votes, was struck down by the U.S. Supreme Court, thus ending the presidential election of 2000 once and for all. As thanks for this piece of bravery, and as if to prove that's what it was, the High Court's majority has since been roundly excoriated by hardcore recountniks everywhere: "partisan," "ideological," "chilling," "lawless," a "travesty," a "disgrace." But interestingly enough, the bulk of this bitterness has not been directed against the majority's reasoning. Seven justices concurred, after all, that the Florida ruling warranted reversal. And none of the dissenting justices could convincingly explain how it was any longer feasible for Florida to fix its mistakes and restart the recount—given that the Tallahassee justices had already twice decreed that tabulation past December 12 would violate the law.

The real criticism now being leveled against the majority seems to be this: Law or no law, the U.S. Supreme Court should have given the vice president what he wanted *anyway*. "I cannot see," Justice Ruth Bader Ginsburg announced in her dissent, how a Gore-friendly last-minute recount, "flawed as it may be, would yield a result any less fair or precise than the certification [for Bush] that preceded that recount."

Needless to say, the vice president and his spokesmen and lawyers have never acknowledged so naked a concern to "yield a result" in Florida. They have been concerned instead, they want us to know, with principle. Gore allegedly won a plurality of the votes Floridians "intended" to cast on Election Day. We should not conclude that their intention wasn't realized until every last Florida ballot has been inspected by hand. For a vote is "a human voice," the vice president has reminded us. We "must not let those voices be silenced," lest we silence "the American spirit in a very real way."

Well. Let's think about this "principle" for a moment. The vice president and his supporters demanded a recount in just four of 67 counties in Florida. They attempted to "yield a result," nothing more. In defense of which apparent cynicism, the Gore people respond that George W. Bush, too, could have requested self-interested Florida recounts. But that response is actually a guilty plea, barely disguised. For what they are suggesting, if you look at it closely, is that in a tight statewide election that might determine the American presidency, the winner should be the fellow who campaigns best *after* the polls have closed—the fellow who games the system most effectively, the fellow whose agents are prepared to exploit its loopholes most unscrupulously. It should be this way just this once, at least. So that just this one Democratic candidate can win just this one presidential election.

This is no kind of "principle" at all, of course. We blame Al Gore for the fact that so many people are now prepared to pretend otherwise—and to cast aspersions on American democracy in the process. To mitigate this blame, he'll have to do even better than he did last Wednesday.

—David Tell, for the Editors

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Your child's brain is a language learning machine...

...and THIS is the ON switch.

Start learning Spanish, French, German or Italian today. GUARANTEED, or your money back!

Is your child between the ages of 1 and 12? If so, then these are your child's magic years to learn a new language easily and naturally. Research proves it. Studies confirm it. And MUZZY delivers it, guaranteed!

Your Child Will *Love* MUZZY

He sings. He dances. And he's a great storyteller. MUZZY is a fascinating cartoon character children love. Five videos, two audios, script book, guides and CD-ROM immerse your child in a language. It's so much fun, your child won't even realize he or she is learning!

Special Offer—*FREE* Interactive CD-ROM!

Developed by the world-renowned British Broadcasting Corp., the MUZZY program has taken Europe by storm (ever notice how many Europeans speak more than one language?!). And now, through Early Advantage, MUZZY has come to the United States. It can be yours, for five easy payments of just 33^{80}. If you act right now, you'll receive our interactive MUZZY CD-ROM as a FREE bonus, while supplies last.

RISK-FREE Money-Back Guarantee

Your child can try MUZZY in your own home Risk-Free. If your child isn't speaking a second language in weeks, simply return your program for a prompt, courteous refund!

So don't wait until it's too late. **Call 1-888-248-0480** today, and give your child an early advantage that will last the rest of his/her life.

MUZZY: The BBC Language Course for Children

YES! Please send me MUZZY. For each course ordered, please charge my credit card 33^{80} a month for 5 months. Charge me 9^{50} shipping/handling with my first installment. I understand that if I am not completely satisfied for any reason, I may return my order within 30 days for a full refund.

____French (QTY) ____Spanish (QTY) ____Italian (QTY) ____German (QTY) ____ESL (QTY)

Name _____ (Please print clearly)

Address _____

City _____ State _____ Zip _____

Credit Card Number _____

Expiration Date _____ Signature _____ (Subject to Acceptance.)

❑ I prefer to pay by check, and am enclosing ($169+$9^{50}$) a total of 178^{50}* for each program ordered, payable to Early Advantage. *CT residents, add 6% sales tax.

CALL 1-888-248-0480

www.early-advantage.com

or Mail to: Early Advantage
270 Monroe Turnpike
P.O. Box 4063, Monroe, CT 06468

Early Advantage™ LLC

Order Now!
Use Bonus Code 01-0027 to receive your FREE CD-ROM with purchase

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

The Second Bush White House

The model is Gerald Ford's "spokes of the wheel," not Bush I. BY FRED BARNES

IT'S GOING TO BE CROWDED in the Oval Office of President George W. Bush. Andrew Card will have the title of White House chief of staff, but in truth a troika of equals will have instant access to the president: Card, political adviser Karl Rove, and communications czarina Karen Hughes. This sounds like the "spokes of the wheel" scheme at the White House of President Gerald Ford. Then, a half dozen aides had the privilege of dropping by the Oval Office any time without prior approval of the chief of staff. And one of them is back again, Dick Cheney, who became Ford's chief of staff. Now, as vice president, Cheney will be the biggest spoke of all, only he won't be around the White House as much as the others, given his duties on Capitol Hill and elsewhere. By the way, Bush, who gives everyone a nickname, now refers to Cheney as "Big Time."

What does all this structural and personnel stuff add up to? It means the coterie of advisers with the most influence in shaping Bush's presidential campaign will be just as significant in charting the direction of his administration. So, to take this a step further, Bush isn't likely to deliver the centrist or center-left administration that Democrats and the media have been clamoring for. The Bush presidency, at the start anyway, will be center-right. Sure, Card has been a prominent GOP moderate going back to his days as a Massachusetts state legislator. Unlike some Republican moderates, however, he is no conservative-hater. He was friendly and accommodating to conservatives when he worked in Bush senior's White House, and he won't have any choice but to act the same under George W. Conservatives are Bush's indispensable allies now.

One reason Card will have no choice is Rove. In Texas, hard-core conservatives have their doubts about Rove. He's been the chief strategist for Republican candidates of all types—country club, moderate, pro-choice, conservative. As Bush's top political adviser, Rove has drawn an analogy between 2000 and 1896, when Republican William McKinley put together a new coalition, including a strong working class element, and won the presidency. Bush would do the same this year, Rove predicted. It didn't quite work out that way. Bush was elected by holding together a shrunken version of the old Reagan coalition: conservatives, men, married people, evangelical Christians, southerners. What's important about Rove's dream coalition, which he thinks may yet emerge, is that it would not supplant the Reagan coalition but build on it.

The coterie of advisers with the most influence in shaping the campaign will be just as significant in charting the direction of the new administration.

"Rove understands the Reagan coalition," says Grover Norquist, the conservative who heads Americans for Tax Reform. "During the campaign, he put Bush in the center of it. As a conservative, I'm very comfortable that Rove will always be in sync with the coalition." And if Rove is, Bush should be, too. Rove also lured conservative intellectuals to Austin in recent years for chats with Bush. These included Myron Magnet, Richard John Neuhaus, John J. DiIulio Jr., and David Horowitz. And Rove was critical in hiring a gifted young conservative writer, Mike Gerson, as Bush's campaign speechwriter. Gerson had previously worked for Jack Kemp, Bob Dole, Dan Coats, and Chuck Colson—and will become chief White House speechwriter. Another Rove aide, Chris Henick, will be White House liaison to governors.

Bureaucratically, Hughes will have a bigger role at the White House than Rove. The speechwriting, media relations, communications, and press offices will all come under her, and who knows what else. The expectation had been that she'd become press secretary and deliver the daily briefing. But she didn't get along with reporters during the campaign and decided to kick herself upstairs. Reporters likened her getting-along skills to those of Nurse Ratched, the authoritarian figure in Ken Kesey's *One Flew Over the Cuckoo's Nest*. They faulted her for subtracting from their information rather than adding to it. The complaints weren't quite fair, but reporters believed them nonetheless.

Whether they know it or not, they did Hughes a favor by grousing about her. As press secretary, she probably would not have been a factor in policy disputes at the White House. Mike McCurry, President Clinton's former spokesman, says a press secretary can't function properly if he or she is involved on one side or another in internal struggles. Maybe so. But reporters didn't do *themselves* any favor. What they need is a press secretary who's close to the president, trusted by him, and consistently able

Fred Barnes is executive editor of THE WEEKLY STANDARD.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

to reflect his views accurately. Hughes fits the bill. Ari Fleischer, who takes the job in her stead, will have to work to develop that kind of relationship with Bush. But he starts with better relations with reporters, for what that's worth.

Given Hughes's expanded role, her political views become important. How conservative is she? Probably not as conservative as Bush. A staffer said that at campaign meetings attended by Hughes, among others, Bush himself was invariably the most conservative person in the room. Last summer, Kate O'Beirne, the Washington editor of *National Review*, arranged a dinner at the Oval Room restaurant near the White House where Hughes was introduced to conservative staffers on Capitol Hill, all women. "She sounded like a conservative," one participant said. "Not a movement conservative, but at least she wanted to reach out to us. Of course she's a Bush person first."

As for Cheney, his conservatism is not in doubt, though he's hardly a zealot. In the Bush White House, he will surely have more clout than any vice president, ever. For one thing, Cheney will be the chief legislative strategist. He will also play a major role in foreign and defense policy. Along that line, he's hired a Washington attorney, Lewis Libby, as his chief of staff. When Cheney was defense secretary in the first Bush administration, Libby was an aide. One more thing about Cheney: The always reliable Thomas DeFrank of the New York *Daily News* reports it was not former President Bush but Cheney who advised George W. to recruit James Baker to run his legal operation during the Florida recount and court fights. Good advice.

Don't expect the spokes of the wheel to last. It didn't at the Ford White House. After a few months, Ford realized he needed a more orderly process, which meant a chief of staff with a strong hand. As veep, Cheney will surely continue to have unfettered access. Rove and Hughes may not, unless one of them becomes chief of staff. ♦

Nice Guys Finish as Chief of Staff

The amiable Andrew Card is competent—but above all, a Bush loyalist. BY ANDREW FERGUSON

IT WAS THE DEFINING public policy dispute of the 1990s, and Andrew Card, president of the American Automobile Manufacturers Association, wanted to make sure his voice was heard. President Clinton had offered up his health care reform in late 1993, and by spring of the following year it was in trouble, mostly because some congressional Republicans, along with a few nonpartisan experts, thought it would effectively nationalize one of the country's biggest industries, amounting to 14 percent of the national economy. As the Washington representative of Detroit's three car makers, Card decided to weigh in—on behalf of the president's plan.

Appearing in press conferences with Ted Kennedy, Dan Rostenkowski, and other reformers, Card made an emphatic case for HillaryCare (as critics called it). He was particularly concerned that Congress pass what came to be known as the "employer mandate," requiring every employer of a certain size to buy health insurance for their employees.

"Throughout this national debate on health reform," Card said, "the focus of attention has been on the burden, or increased costs, that would be incurred by businesses that do not provide insurance coverage to their employees. Often overlooked is the burden incurred by those employers who [already] do provide insurance coverage, and pick up the tab for those who do not."

Card was particularly tough on Republicans who refused to go along with the president's plan. They were motivated by "political opportunism," he said, and a desire to embarrass the president.

Reporters covering the health care debate were duly impressed. "One of the best spokesmen for the employer mandate these days is Andrew Card," said a correspondent on National Public Radio. "He's really carrying the president's water these days."

On the face of it, Card would have seemed an unlikely Clintonian. From 1989 to 1991 he served as deputy chief of staff to President Bush. In 1992 Bush named him secretary of transportation. But times change, and the Bush loyalist became a loyal lobbyist for car manufacturers who were particularly enamored of one aspect of Clinton's reform. In a provision carefully designed for the automotive industry and other heavy manufacturers, the plan would have transferred hundreds of millions of dollars in their annual health care costs to the federal government. Among businesses, car makers were one of HillaryCare's few winners.

Now times have changed again, and Card has been chosen by George W. Bush to serve as his White House chief of staff. The appointment and the man himself have been universally praised. "You're not going to find anyone who doesn't think he's a good guy," says Rob Portman, a Republican congressman who worked with Card in the Bush White House. And a quick canvass of Washington types—both Democrats and Republicans, veterans of the health care wars and survivors of the first Bush administration—bears this out. Which is to be expected, of course, when you ask

Andrew Ferguson is a senior editor at THE WEEKLY STANDARD.

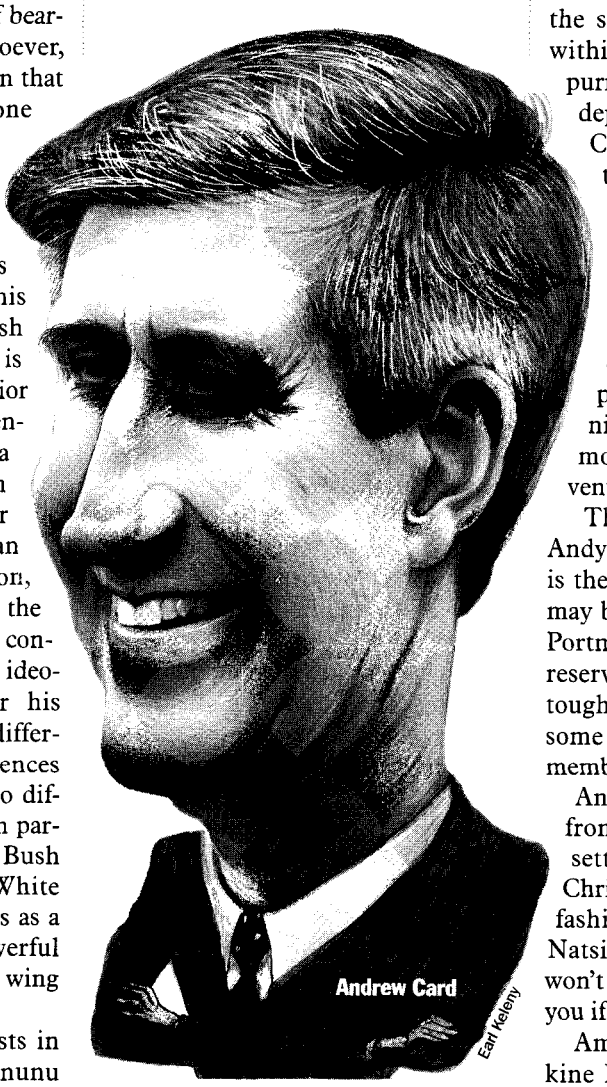
LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

political people to comment on a man who is about to control access to many hundreds of political jobs. But in Card's case the affection seems not only universal but genuine.

"He was an extraordinarily calming influence in that White House," says Constance Horner, who worked as director of the Office of Personnel Management under President Bush. "He always conveyed a sense of bearing no one any ill will whatsoever, which was not a common trait in that environment. He was someone people would go to for help, because he worked in good faith and trusted the good faith of others."

Card's management style was in stark contrast to that of his immediate boss in the Bush White House, John Sununu. It is interesting to note that the senior Bush, upon winning the presidency, chose as his closest aide a highly ideological politician (Sununu was a former governor of New Hampshire) with an Adam Clymer-like reputation, while the younger Bush chooses the quintessential staff man: genial, conciliatory, and happy to adopt the ideological coloration of whoever his employer happens to be. The difference probably reflects differences between father and son, but also differences between the Republican party circa 1988 and circa 2000. Bush senior needed to staff his White House with visible conservatives as a reassurance to the party's powerful right wing. Nowadays, the right wing isn't really worth the bother.

Notwithstanding the contrasts in temperament and politics, Sununu and Card share a fierce and impregnable sense of loyalty, the virtue that Bushes most dearly prize. Andy Card has been a Bush man for more than twenty years. He's an engineer by training, with all the gifts for orderliness and competence that this implies, but he was early on drawn to politics, and ran first for public office at the age of 25. As a young Massachusetts state legislator—one in a tiny minority of Republicans—he was sought out by George the elder in the late 1970s as Bush prepared his first campaign for president. In his aging Chevette, cluttered with maps and leaflets and campaign posters, Card ferried the candidate to speeches and potluck suppers across the commonwealth, and as campaign chairman he helped engineer Bush's close-cut victory over Ronald Reagan in the 1980 Massachusetts primary. Card himself ran a long-shot race for governor in the 1982 primary, finishing third in a field of three. With Bush's help he secured a staff job in the Reagan White House and moved to Washington. He has been a favorite Bush go-to guy ever since, handling a series of tricky tasks with tact and skill.


Andrew Card
Earl Keleny

After three years as deputy chief of staff, Card was elevated to the cabinet as secretary of transportation—a career leap almost unheard of in the hapless world of Washington's professional staff folk, and a signal that loyalty to Bushes would be loyalty repaid. In the summer of 1992, when the administration's sluggish response to Hurricane Andrew threatened the president's already iffy reelection, Bush dispatched Card to the scene in southern Florida, and within 48 hours the critics were purring the secretary's praises. The deposed president then assigned Card the painful task of helping the incoming Clintonites with their transition. And earlier this year, facing resistance among mossbacks at the Republican National Committee to its plans for a deliriously "inclusive" convention, the Bush campaign placed Card in charge of planning the event. The result was the most successful Republican convention in a dozen years.

The closest thing to a criticism of Andy Card you might hear these days is the rather mild suggestion that he may be too nice for his new job. Rob Portman, for one, expresses no such reservations. "I've seen him be very tough when he has to be, delivering some very unpleasant messages to members of the staff," Portman says.

Andrew Natsios, a friend of Card's from their days in the Massachusetts legislature, agrees. "He's a Christian gentleman—that's an old-fashioned phrase but it fits," says Natsios. "He won't yell at you. He won't raise his voice. But he will fire you if he has to. That's the job."

Among recent chiefs of staff, Erskine Bowles most closely resembles the type that Andrew Card promises to be. Polite and mild mannered, he will head an administration that is pragmatic, unadventurous, averse to risk—a triumph of competence over ideology. This is the government George W. Bush pledged to deliver, and Card will reflect perfectly the views of the man he serves. And so long as the new president doesn't try to nationalize the health care system, everyone should be happy. ♦

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Are You an Ostrich-Catholic ?

In the April 2, 2000 *Our Sunday Visitor*, a national Catholic paper, its Editor in Chief condemned what he called the "smears" and "slanders" directed at Catholic priests, and his case-in-point was the now-famous *Kansas City Star* study on homosexuality and AIDS in the priesthood, the verdict of which was: "it appears that priests are dying of AIDS at a rate at least four times that of the general U.S. population...."

The Editor in Chief, a layman, allowed that some priests are "troubled and troubling," but added, "Is this so unusual?... If sin is no stranger to us, why do we expect it to be a stranger to our priests?" Fine. But we do expect our priests to be *models* of Catholic morality — don't we? Moreover, just as married couples take a *vow* of fidelity, priests take a *vow* of celibacy, and just as adultery is no garden-variety sin, neither is violating the vow of celibacy.

The Editor in Chief then described "a new ritual" he's worked out: "When I am wont to criticize a priest for something he has done or failed to do, I pray for him instead." Yes, we all need prayer, but let's say the Editor in Chief's priest has the kneelers ripped out and endorses pre-marital sex, abortion for teenage girls, and same-sex "marriage." Just pray? Or let's say the Editor in Chief's acolyte son is sodomized in the sacristy or his penitent daughter is raped in the Reconciliation Room. Just pray?

New Covenant is a Catholic spirituality magazine. In its July 1997 issue, its Editor, a layman, informed his readers of a "resolution" he made: "I will not criticize the clergy," adding "I'll extend that promise to others in the Church." Turning a blind eye to immorality, dissent, and heresy — what kind of spirituality is *this*?

Alas, granting priests immunity from criticism is all too common in the Church today, and it involves a misplaced piety. While the *office* of the priesthood is above criticism, priests who drag the nobility of their calling through the mud are *not*. Indeed, it's an unconscionable injustice to the office to let them get away with their odious words or deeds.

Imagine if all Catholics were silent about abuse and treachery. Why, sexual predators in the priesthood would never have been exposed and would still be mutilating the lives and even destroying the faith of fellow Catholics. And dissenters and heretics, who already control many Catholic institutions, would have virtually free rein.

It was the unwillingness to face and deal with the corruption in the Church that gave us the Protestant Reformation, and, sadly, this see-no-evil mentality is once again plaguing the Church.

We at the NEW OXFORD REVIEW, a feisty orthodox Catholic monthly magazine, are mounting an offensive to restore moral and doctrinal integrity to the Church. We "belong in every loyal Catholic's arsenal," says Fr. Joseph Fessio. We have "cheek," says *Newsweek* — and we're also cheap (see below). If you're a willfully naïve ostrich-Catholic, you wouldn't like us, so just put your head back in the sand. But if you want to be part of the solution rather than part of the problem, subscribe today!

(Please allow 2 to 8 weeks for delivery of first issue.)

SPECIAL DISCOUNT RATES FOR FIRST-TIME SUBSCRIBERS

- ☐ One-year subscription ..... $14 (regularly $19)
- ☐ One-year student, unemployed, or retired person's subscription ..... $12 (regularly $16)
- ☐ Two-year subscription ..... $23 (regularly $35)
- ☐ One-year non-U.S. subscription ..... US$24 (regularly $29) Payment must be drawn in U.S. Dollars.
- ☐ Sample copy $3.50

➔ Our prices are *so low* because you can't pay by credit card and payment must accompany order. Send letter or this coupon with check payable to NEW OXFORD REVIEW. Mail to:

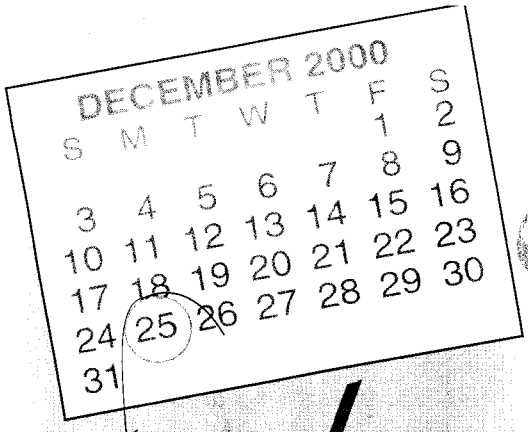
NEW OXFORD REVIEW
Room 208
1069 Kains Ave.
Berkeley CA 94706

Name (Please print or type)

Street Address or P.O. Box

City State Zip

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED



Give the gift that keeps on going

When it's the thought that counts, send the most thoughtful magazine in Washington. Order a subscription to [illegible] at 59% off the cover price, and as a bonus, receive a gift subscription, absolutely [illegible]!

Here's what Washington [illegible] papers [illegible]

"The Standard is a 'must read'."
William J. Bennett

"Required reading up here."
John Kasich, Chairman House Budget Committee

"...the feisty house organ of conservative politics."
Walter Shapiro, USA Today

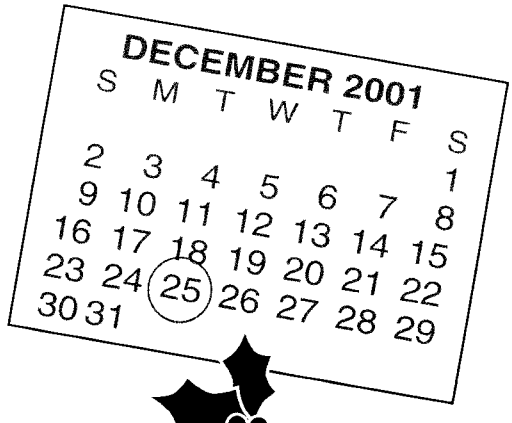
"...insights and arguments are uncommonly provocative."
David Broder, The Washington Post

Special Holiday Savings Offer

With this special offer, you can start or renew your own yearly subscription for just $1.65 an issue (that's a 59% saving off the cover price)!!! It's like getting two subscriptions for the price of one!

Festive Holiday Greeting Cards

You'll receive our very own gift cards to personally announce your gifts. Simply sign your name, then drop the cards in the mail, tuck them in their stocking, or hang them on their trees!



Convenient Payment

No need to send money now. We'll gladly bill you later...in installments if you prefer.

Order Today!

Ordering your gifts has never been easier. Simply complete the postage paid reply card on the opposite page and return it...TODAY!

the weekly Standard®

THE WEEKLY STANDARD® is published 48 times annually. RATES GOOD IN THE U.S. ONLY. COVER PRICE IS $3.95.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

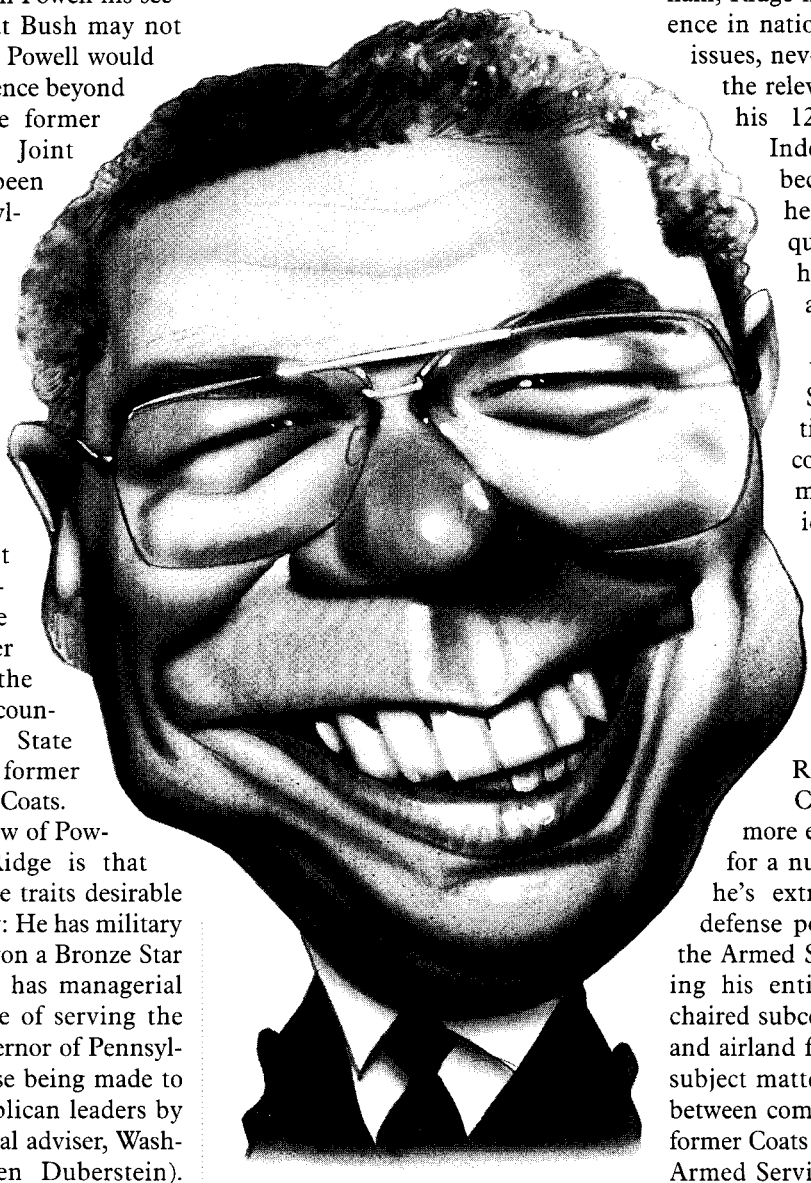
The Long Arm of Colin Powell

Will the next secretary of state also run the Pentagon? BY MATTHEW REES

GEORGE W. BUSH has never left much doubt that he intended to name Colin Powell his secretary of state. What Bush may not have foreseen is that Powell would try to press his influence beyond Foggy Bottom. The former chairman of the Joint Chiefs of Staff has been lobbying for Pennsylvania governor Tom Ridge to become defense secretary. And this in turn has instigated a minor turf battle within the clubby Bush world. While Dick Cheney has signaled to some that he could accept Ridge, knowledgeable sources say he would actually prefer to see someone get the job who's more of a counterweight to the State Department, like former Indiana senator Dan Coats.

The charitable view of Powell's support for Ridge is that Ridge possesses some traits desirable in a defense secretary: He has military experience, having won a Bronze Star in Vietnam, and he has managerial experience by virtue of serving the past six years as governor of Pennsylvania (this is the case being made to reporters and Republican leaders by Powell's chief political adviser, Washington lobbyist Ken Duberstein). Ridge has two other things in common with Powell: He's an ideological moderate, and Bush likes him.

Matthew Rees is a staff writer at THE WEEKLY STANDARD.



Colin Powell

But many top Republicans, noting Powell's political savvy, ascribe to him more Machiavellian motives. They believe he wants a weak defense secretary so it will be easier for him to intervene in Pentagon business. (This is one reason Paul Wolfowitz, a top Pentagon official under Bush senior, was scotched for the top job, as he would have come in with his own power base.) It's easy to see how this could happen. Powell has been pushing for one of his lieutenants, Richard Armitage, to be given a senior Pentagon post, perhaps even deputy secretary, the number two job. What's more, other than his service in Vietnam, Ridge has no particular experience in national security or defense issues, never having sat on any of the relevant committees during his 12 years in Congress. Indeed, were Ridge to become defense secretary, he'd be one of the least qualified people ever to hold the job. He would also be hobbled by his dovish voting record in the House: against the Strategic Defense Initiative, against funding the contras, and for one of the most wrongheaded liberal ideas of all—the nuclear freeze. Some congressional conservatives, including Senate Armed Services member Jim Inhofe, have already gone public with their opposition to Ridge.

Conservatives are much more enthusiastic about Coats, for a number of reasons. First, he's extremely well versed in defense policy, having served on the Armed Services Committee during his entire Senate tenure, and chaired subcommittees on personnel and airland forces. He also loves the subject matter. "If he had to choose between committee hearings," says a former Coats aide, "he always went to Armed Services." Second, Coats led the fight among Senate Republicans for preserving the bans on gays in the military and abortion in overseas military hospitals, and loudly questioned

Illustration by Thomas Fluharty

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

whether women should be permitted to serve in combat.

Third, Coats has a long and trusted relationship with Dick Cheney. They served together in the House for eight years, and Coats's seat on the Senate Armed Services Committee coincided with Cheney's tenure as defense secretary. Last, Coats would be easily confirmed, and enjoys good relations not only with his former Republican colleagues, but also with Democrats, thus easing the difficult task of winning increased spending on defense. (He and Joe Lieberman were the authors of a proposal, adopted in 1996, requiring the Pentagon and a group of independent military analysts to carry out sweeping reviews of Pentagon spending in light of expected future threats.)

Well-placed allies further enhance Coats's chances of being chosen. Senate majority leader Trent Lott is backing Coats—they were close friends in the Senate—and raised the issue with Bush during a December 2 meeting in Crawford, Texas. What's more, Dave Gribben, a former chief of staff to Coats, is now a top Cheney aide. Nor is Gribben the only former aide to Coats who's well positioned: Dave Hoppe is Lott's chief of staff, Mike Gerson is Bush's chief speechwriter, and Ziad Ojakli is a top aide on Bush's transition team.

As for the nuts and bolts of defense policy, Coats tends to be in the conservative mainstream, though not entirely predictable. He generally supports increased military spending, but criticized the Clinton administration's deployment of troops to Bosnia in December 1995, and opposed Bob Dole's measure authorizing the deployment. Similarly, while he never joined the jihad against the Navy for Tailhook, he did strongly oppose the promotion of Bob Stumpf after the Navy admitted Stumpf had been present for some of the hijinks in Las Vegas.

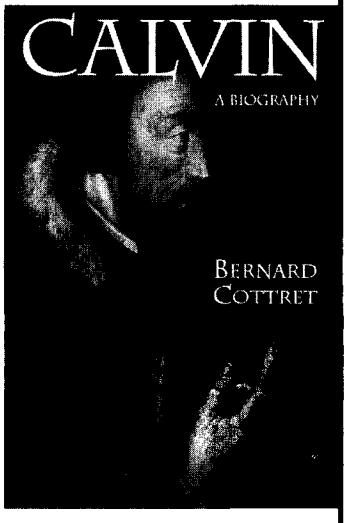
But even when adopting independent positions, Coats was not a grandstander. Indeed, in a body full of loudmouths, he was one of the Senate's more reticent members. And former aides say he wouldn't get exercised about being overshadowed.

That's good, because whoever becomes defense secretary in a Bush administration, Powell and Cheney will be the go-to guys on defense. Thus the most telling dynamic in defense policy might well be the relationship between the secretary of state and the vice president, who haven't always seen eye-to-eye (they clashed, in particular, over how to carry out the Gulf War). In short, with Powell eager to stir the Pentagon's policy stew, would Cheney give him a free hand? ♦

CALVIN A BIOGRAPHY

BERNARD COTTRET

"That this is a history of John Calvin's hope as much as a biography of him helps account for the careful attention to political developments in Switzerland and France, making it also a history of ideas that pivots on the sixteenth century's religious controversies. . . . We meet Calvin in the institutions he shaped and not as a figure with whom we might enjoy a drink at the corner bar. We see him as a behind-the-scenes architect of an edifice that casts a shadow across the more than four centuries that separate us from the man." — *Booklist*



Praise for the original, French edition:

"A tour de force. . . . Cottret has avoided the trap of painting a character who would have had, from the beginning, all of the traits of his last years, and endeavors to show how Calvin became Calvin. . . . Brilliant." — *Le Monde*

"This excellent book regards the French Reformer with new eyes. . . . Cottret mixes seriousness and welcome humor. For the public interested in a history of Protestantism, this book is full of reflections of the spirit of the Reformation." — *Les Livres du Mois*

ISBN 0-8028-4289-5 · 391 pages · hardcover · $28.00

At your bookstore,
or call 800-253-7521
Fax: 616-459-6540
www.eerdmans.com

0540 WM. B. EERDMANS PUBLISHING CO.
255 JEFFERSON AVE. S.E. / GRAND RAPIDS, MI 49503

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

An Act of Courage

Under Rehnquist's leadership, the Court did the right thing. BY NELSON LUND

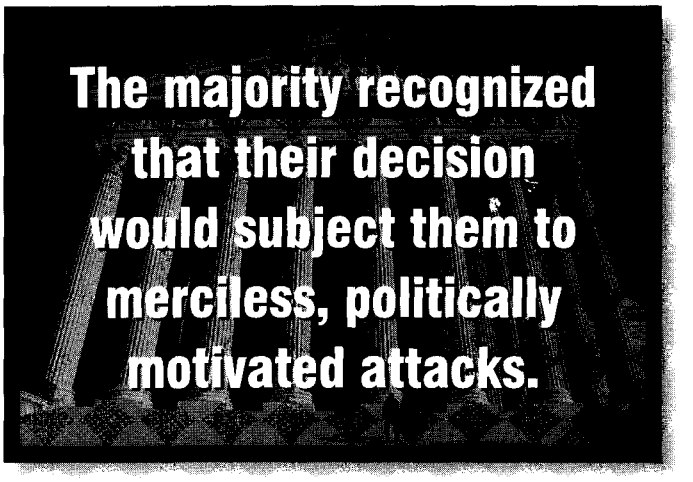
GENERATIONS of law students have learned that the U.S. Supreme Court should avoid entanglement in "political" cases in order to preserve its reputation for impartiality. Unless, of course, such cases involve certain selectively chosen constitutional principles, which invariably call for the uninhibited expenditure of this carefully husbanded political capital.

Some of the more conservative justices have bought into this excessive and asymmetrical concern with protecting the Court's reputation. The decision in *Bush* v. *Gore*, however, suggests that a majority are now willing to enforce the law more evenhandedly, even when that very evenhandedness will subject the Court to strident political attacks.

The High Court's decision at first glance looks important primarily for its effect on this one presidential contest. The holding is deliberately narrow, and seems unlikely to have significant effects on future elections. The broader significance lies in a passage near the end of the majority opinion, where the justices stress their sensitivity to the limits of judicial authority and the wisdom of leaving the selection of the president to the political sphere. Despite these considerations, they say, it sometimes "becomes our unsought responsibility to resolve the federal and constitutional issues the judicial system has been forced to confront."

The Court could easily have avoided this responsibility, and that is what many observers expected. These expectations had a real foundation. In 1992, for example, the Court reaffirmed the judicially created right to abortion, even while strongly hinting that some of those who voted to do so had serious misgivings. One important reason they gave for their decision was a fear that overruling *Roe* v. *Wade* would be *perceived* as a capitulation to political pressure.

Bush v. *Gore* rejects this beguiling logic. The majority, including two justices who had joined the 1992 abortion opinion, recognized that their decision would subject them to merciless, politically motivated attacks. But rather than take the easy way out, they courageously accepted their "unsought responsibility" to require that the Florida court comply with the Constitution.



The significance of this act of courage comes into focus when we consider the strongest argument offered by the dissenters. Justice Breyer, who admitted that the Florida court's decision was arbitrary and unconstitutional, suggested that the Twelfth Amendment assigns Congress (rather than the federal courts) the responsibility for correcting such problems. This is a plausible interpretation of the Constitution, especially if one also concludes (as Justice Breyer did not) that the Constitution authorized the Florida legislature to override the Florida court's attempted retroactive rewrite of the state election statute.

But Justice Breyer's position does not rest on a disinterested interpretation of the Constitution. Rather, it is based on the tired theory that "the appearance of a split decision runs the risk of undermining the public's confidence in the Court itself." Justice Breyer thought the risk not worth running because the majority's decision does not "vindicate a fundamental constitutional principle."

What would it mean to "vindicate a fundamental constitutional principle"? As it happens, we know what Justice Breyer means. Just a few months ago, he wrote the majority opinion in a 5-4 case that split the Court much more bitterly than this one. In that case, moreover, Justice Breyer adopted a far-fetched interpretation of a state statute that contradicted the state's interpretation of its own law. The result was the invalidation of a state statute that had been drafted specifically to conform with Supreme Court precedent. And what fundamental constitutional principle was vindicated? The right to what is euphemistically called "partial-birth abortion." Now there's something worth fighting for.

If the Twelfth Amendment argument is the best that the *Bush* v. *Gore* dissenters had to offer, the worst was Justice Stevens's claim that Governor Bush irresponsibly impugned the impartiality of the Florida judges by appealing their ruling. Justice Stevens also noted that the real loser in this year's election will be the nation's "confidence in the judge as an impartial guardian of the rule of law." It is

Nelson Lund is professor of law at George Mason University in Arlington, Virginia.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

certainly true that almost no one will believe that *all* the judges who ruled in the election cases were impartial, or devoted to the rule of law. Justice Stevens, however, was entirely wrong to place the blame for that fact on his colleagues and on Governor Bush.

The blame rests squarely on Florida's supreme court, which violated the Constitution, and on the High Court dissenters, who would have let the Florida judges get away with it. "Impartial guardians of the rule of law" are willing to enforce the law even when they know they will be excoriated for doing so. Which is why the majority decision in *Bush* v. *Gore* deserves a spirited defense. ♦

You **can** take it with you.

Before moving, please call 1-800-274-7293 to assure that there are no interruptions in your subscription to THE WEEKLY STANDARD.

the weekly Standard

From *U.S.* v. *Nixon* to *Bush* v. *Gore*

Political problems deserve political solutions.

BY ROBERT F. NAGEL

NOW THAT THE U.S. Supreme Court has effectively stopped the Florida recount, it is natural to believe that the justices have once again saved us from political and legal disaster. There is no doubt that the Florida Supreme Court's stunning decision to order manual recounts across Florida created the specter, as Chief Justice Wells said in dissent, of chaos. What the Florida decision did was demonstrate how legal argumentation in America has metastasized. When even the plainest meaning is subject to the relentless pressure exerted by all those urgent words streaming from the mouths of lawyers, our institutions are exposed to something close to intellectual anarchy.

To get a clear view of the nature of that chaos, recall one detail from the Florida court's work. In its first decision, the court said that Florida secretary of state Katherine Harris had abused her discretion by enforcing the seven-day statutory deadline for certifying the vote, and it instructed her to observe a twelve-day deadline. In its second decision, a four-justice majority of the same court concluded that the secretary had subsequently abused her discretion by enforcing the court's *own* twelve-day deadline.

If words like "seven" and "twelve" cannot hold, nothing can hold, and uncertainty stretches away to the horizon. Touchingly oblivious to the anarchical implications of its own opinion, the Florida court simply assumed that the manual recount could proceed in an orderly and timely fashion. In fact, of course, everything was thrown up in the air. Before the U.S. Supreme Court stayed the recount, lawyers were arguing before a trial judge about the procedures for conducting the recounts. Those determinations might have been appealed. The recounted vote itself might have been challenged, and that determination might have been appealed. The Florida legislature could have nullified the recount by statute, but that statute could have led to a lawsuit and an appeal. In counting the electoral votes, Congress eventually would have resolved the uncertainty, but if words do not hold, the congressional count could be questioned in court and any decision appealed, and so on until it is time for another presidential election.

It is understandable, then, that many now feel relief that the U.S. Supreme Court has reestablished order by permanently halting the recount. But there is irony, and eventually perhaps futility, in using the lawyers who sit on the Supreme Court to stabilize what lawyers and lower courts have destabilized. After all, in recent decades the Court itself has done much to establish the very judicial role that the four Florida justices embraced so heedlessly. It announced a constitutional right to abortion when not a word can be found in the Constitution on that subject. It converted into an authorization for racial preferences a federal statute whose plain words and ascertainable purpose prohibited racial discrimination. Through "interpretation," it grafted a complicated sexual harassment code onto a federal law that was silent on that specific subject. Indeed, the mod-

Robert F. Nagel is a professor of law at the University of Colorado and the author of The Collapse of American Federalism, *forthcoming from Oxford.*

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

You deserve a factual look at...

Terror in Israel
Can the peace process be saved?

The world is once again confronted with the frenzy of Arab-Muslim terror. It has found its crudest and most disturbing expression in the upheavals in Israel, the well-orchestrated "second intifada," and in the suicide attack on the USS COLE, in which seventeen American sailors died and scores were gravely wounded.

What are the facts?

A history of terror. Since that famous handshake on the White House lawn seven years ago, there have been many suicide bombings and other murderous attacks on Jews in Israel. Not content with that, the Muslim-Arab murderers have perpetrated outrages against Israel and against other western targets all over the world. For instance, they bombed and totally destroyed two U.S. embassies in Africa, with grievous loss of life. They bombed the World Trade Center in New York and were barely prevented from bombing the Lincoln and Holland Tunnels, the U.N. building and the subway. Arab-Muslim terrorists car bombed and totally destroyed the Jewish Community Center in Buenos Aires, the Israeli Embassy in the same city, and bombed and destroyed the Israeli Embassy in London. Hundreds of people were killed. There can be no question that Arab-Muslim terrorists were behind the PanAm flight 103 plane explosion (whether they were Libyans or Palestinians, does it make any difference?), the blowing up of the U.S. Air Force barracks in Saudi Arabia, in which nineteen Air Force personnel died, and in literally hundreds of other acts of terror. The Arab-Muslim states were in all cases conspicuous by their unhelpfulness, stiff-arming all efforts by Israel and the United States to find and punish the culprits. Without exception, all these terror acts, including the murder of two U.S. diplomats in Khartoum (Sudan), were explicitly authored by Yassir Arafat. That is a man, who until too long ago, was classified by the U.S. State Department as an international terrorist and was precluded from entering the United States. Now, thanks mostly to deluded Israeli leftists and "peace activists", he has emerged as a recipient of the Nobel Peace Prize (surely one of recent history's most outrageous jokes) and as a "statesman" who is received with honor in the capitals and chancelleries of the world.

Any pretext suffices. The world is comfortable in believing that the rage of the Arab-Muslims is directed toward Israel and that peace would reign in the Middle East and the world if, by some unholy miracle, Israel would agree to all Arab requests or, better yet, disappear altogether. That calamity would cause great rejoicing in the Arab-Muslim world. But it would really only be the beginning. The real enemy, the "great Satan" is the Western world, and especially the United States. Everything we believe in -- democracy, justice, human rights, freedom of religion (especially!) is anathema to the Arab-Muslims. But, of course, the destruction of the State of Israel is the primary and immediate goal, not just of the Palestinian Arabs, but of all Arab Muslims and of the non-Arab Iranians. Instead of following the agreements of the Oslo Accord, Arafat goads his followers with blood-curdling speeches into ever-increasing violence, urging them to "liberate Palestine" (that means all of Israel) and Jerusalem by jihad (holy war), "by blood and by fire," and to become martyrs for this sacred cause.

> "For peace to be possible, the Arab world has to develop a totally different mind set. It has to fully accept to live side-by-side with the Jewish State of Israel."

Any pretext to violence suffices. Now it is a visit to the Temple Mount by Ariel Sharon. Before that it was the opening of an archaeological tunnel that offended the sensitivities of the Palestinian Arabs. Then it was the construction of residences by Israeli Jews on land that they owned. And often no pretext at all is needed. Terror is committed out of sheer hatred for the Jews and the desire to kill as many of them as possible. And that is the nub of the problem. Only the most naive can believe that the Palestinian Arabs (or the rest of the Arab-Muslim world) can be placated by the Israelis bringing "sacrifices for peace." The Arabs will not be satisfied with any piece of land. Even if the Israeli Jews were prepared to hand over the entire land of Israel to the Arabs and only retain, perhaps, the enclave of Tel Aviv, it would not suffice. The elimination of any Jewish vestige is the inalterable goal. The presence of Jews in the Middle East is an unacceptable thorn in the side of the Arabs -- an insult that must be avenged and eliminated. But, of course, no peace can come about until that attitude and that mindset change.

What does this mean for the so-called "peace process"? The Israelis, especially under the leadership of Ehud Barak, have fulfilled every obligation undertaken in the Oslo Accord -- including many additional concessions that were not required of them. Arafat and his people have fulfilled none of their obligations, including the most basic one, namely to abstain from violence and terror. They have not amended their infamous charter, which calls for the destruction of the State of Israel. They have created an army of over 40,000 men, with missiles, artillery and anti-tank weapons, totally prohibited under the Oslo Accord. Can the "peace process" be saved? At this point, and in view of recent happenings, the regretful answer has to be that it doesn't seem likely for any foreseeable future. Since all Arab children are imbued from first grade with hatred for the Jews and with the desire to become martyrs for their cause, that would seem to be a long way off.

This ad has been published and paid for by

FLAME

Facts and Logic About the Middle East
P.O. Box 590359 ■ San Francisco, CA 94159

FLAME is a tax-exempt, non-profit educational 501(c)(3) organization. Its purpose is the research and publication of the facts regarding developments in the Middle East and exposing false propaganda that might harm the interests of the United States and its allies in that area of the world. Your tax-deductible contributions are welcome. They enable us to pursue these goals and to publish these messages in national newspapers and magazines. We have virtually no overhead. Almost all of our revenue pays for our educational work, for these clarifying messages, and for related direct mail.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

ern Supreme Court's basic role has been to alter established legal understandings and to open up vast panoramas of adversarial argument.

Nevertheless, the American impulse to trust the Court as the embodiment of the rule of law is deep and implacable. And, of course, the Court sometimes appears to fulfill that expectation in grand style. Consider the last time the Supreme Court intervened when the stakes were as great as they are now. The year was 1974 and the case was *United States* v. *Nixon*, the famous Watergate tapes case. Then, as now, the legitimacy of the office of the presidency seemed in peril, and chaos seemed possible. The Court's hurried decision and President Nixon's subsequent resignation truncated the impeachment process, just as a definitive ruling now has cut off political action by the Florida legislature and the Congress. The public understandably saw the *Nixon* case as reestablishing political order and the rule of law.

The long-term consequences of *Nixon*, however, are sobering. For one thing, the decision broke down the long-established practice that permitted the president to keep Oval Office communications confidential. In exposing the president to the power of a grand jury, it led to the later decision that exposed President Clinton (and, of course, future presidents as well) to the power of trial judges and even private attorneys seeking information in civil cases.

More generally, by insisting that the prosecutorial needs of the grand jury were more important than presidential confidentiality, the Court in *United States* v. *Nixon* planted a new and deeply destabilizing idea—namely, that it is constitutionally unacceptable to rely on the president and the attorney general to make decisions about prosecuting high executive officials. By the same token, it legitimated the idea that impeachment and other political sanctions for executive wrongdoing are untrustworthy and insufficient. These ideas were then institutionalized in the law establishing the office of independent counsel, a law that the Court eventually and amazingly found not to be an unconstitutional intrusion into presidential control over the executive branch.

The Court's effort in *Nixon* to restore order to the political system and to enshrine the rule of law led, then, to the displacement of politics and the bureaucratization of the prosecutorial function. Political judgment was replaced by professionalized norms and a kind of legalistic perfectionism. Presidents ever since have been beset by accusations and investigations.

The American impulse to trust the Court as the embodiment of the rule of law is deep and implacable.

Possibly the worst of all worlds was achieved when these trends came to fruition in the earnest and conscientious person of Kenneth Starr. Precisely because he was entirely true to his statutory duties, his investigation derailed a presidency and his report triggered an impeachment. But precisely because Starr's statutory role was at its root predicated on distrust of both politics and impeachment, neither the country nor the Senate could summon the will to provide a full trial or to exercise high political judgment. The "trial" was a staged drama, and the debate on both sides was dominated by legalized arguments designed to permit senators to evade personal responsibility for their decisions.

In attempting to enforce the rule of law and to circumvent the uncertainties of political struggle, therefore, *United States* v. *Nixon* eventually resulted in an astonishing combination of distortions in our constitutional system: simultaneously, the depletion of the constitutional office of the presidency and the depletion of the process constitutionally mandated for keeping the president in line.

All this should be caution enough for those who today believe the Supreme Court has rescued us from the intellectual chaos unleashed by the Florida court. But there is a further possibility to consider as well. The abrupt and constitutionally innovative method used to remove President Nixon probably fueled resentments that eventually found their outlet in the sustained attacks on Clinton's presidency. In turn, the professionalization of the prosecutorial function that characterized the anti-Clinton investigations and the self-doubt that characterized his Senate trial almost certainly added to the resentments that keep Democrats struggling to undermine a Bush presidency even before it starts. In short, the recent chaos in Florida may itself be in part traceable to the rush to resolve the Nixon crisis through judicial action.

It is not, of course, inevitable that *Bush* v. *Gore* will put in motion a chain of destabilization in the way that *United States* v. *Nixon* did. But the imposition of equal protection standards on state ballot counting procedures has dizzying potential for generating lawsuits. If the Court had not ruled decisively against the recount, the legal mess in Florida would have been ended by the Florida legislature and Congress, just as the Nixon controversy would have been ended through the impeachment process.

In either case, in the long run a non-judicial solution might have led to both constitutional stability and political self-confidence. Now, we will never know. ♦

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Al Gore's Legal Doomsday Machine

All those lawyers on Team Gore ended up litigating their way to defeat. BY TOD LINDBERG

AN ENDLESSLY FASCINATING topic of conversation about the 2000 presidential election has been why Al Gore wasn't winning big as the nominee of the incumbent party in times of unprecedented peace and prosperity. He had four aces, and he still couldn't rake in the pot. An equally fascinating question, it turns out, is how he lost the postelection legal maneuvering. Although the thought will be an awful one for Bush supporters to contemplate, there, too, Gore might have had a winning hand—and certainly had a better hand than he played.

What you see on first glance at the U.S. Supreme Court's ruling in *Bush* v. *Gore* is that seven justices had constitutional problems with the Florida Supreme Court's scheme for recounting votes and that five of them concluded time was up as of December 12. Bush wins with finality. But a closer look shows what might have been a majority for Gore. Two justices, Ginsburg and Stevens, wanted to let the count go forward as the Florida Supreme Court wished. Two more, Breyer and Souter, wanted to let the hand counts go forward, regardless of the supposed December 12 deadline, once the Florida Supreme Court on remand articulated a uniform standard of treatment for ballots to satisfy their equal protection concerns. Two more, Kennedy and O'Connor, expressed the same equal protection concerns but insisted on enforcing the December 12 deadline.

In short, while three justices, Rehnquist, Scalia, and Thomas, were unwilling to accept the Florida Supreme Court's order for a hand recount on grounds that the court's postelection activism had caused it to run afoul of Article II of the U.S. Constitution and Section 5 of Title 3 of the U.S. Code, *six* justices of the U.S. Court seem to have been prepared, under the right circumstances, to *uphold* a hand count of the ballots. True, Kennedy and O'Connor didn't speak to the Article II issue, either by joining Rehnquist's concurring opinion or joining any of the dissents, which is somewhat odd. Still, their unwillingness to join with Rehnquist leaves us with the distinct possibility that six justices might under slightly different conditions have been willing to grant Al Gore his stated wish to "count all the votes."

If that's true, the message for the Gore legal team seems quite clear: You blew it.

With the benefit of hindsight, it seems that the Gore effort made a hash of the separate but related "protest" and "contest" phases of the election challenge. In particular, because the protest phase allows the loser to ask for a hand recount by county canvassing boards, the Gore team seems to have concluded that the battle was over the county counts. Hence the effort to delay Republican secretary of state Katherine Harris's certification of the results past the November 18 deadline, the date on which overseas military ballots were due, until the hand counts could be completed. And hence also the legal efforts to compel the counties to recount and Harris to accept them as part of her November 26 certification.

Gore picked up some votes in this process, but the main result of this effort was just delay—in particular, a delayed beginning for the "contest" phase. Yet, as it turned out, it was only in this phase that Gore could hope to obtain what he wanted: a detailed examination of ballots rejected by counting machines. Had the Gore team fixed its eye on the contest phase, it would not have been in court trying to delay certification but rather would have been eager to get it out of the way in order to begin the main event in the courtroom of Judge N. Sanders Sauls. That might have been as early as November 18, the date on which Harris intended to certify returns. Assuming Judge Sauls would have smacked Gore as hard in this scenario as he did in reality, and on the same timetable, the case would then have gone to the Gore-friendly Florida Supreme Court, which could have reversed Sauls just as imperiously, ordering a recount. From there, it would have been off to the U.S. Supreme Court—where the same outcome as the real *Bush* v. *Gore* would have left the Florida Supreme Court with a week or more to clean up its recount instructions on remand. They then would have been able to "count all the votes" by December 12 and see if Gore really had the goods.

The case might have been all the easier if the Gore legal team had had the foresight to take two additional steps: ask that the recount include all machine-rejected ballots statewide; and ask the courts to establish vote-counting standards more specific than the "clear indication of the intent of the voter" rule propounded in Florida statute. Those would have been two arrows aimed at the heart of the equal protection problem the recount faced.

It might seem like an awful lot to ask the Gore lawyers to figure such matters out in advance. On the other hand, the possibility that whatever remedy was fashioned would be subject to federal scrutiny on equal protection grounds should certainly have occurred to them. It was perfectly reasonable for them to *hope* that they were playing for a final win in the Florida Supreme Court but foolish for them to assume that a Tallahassee courtroom was the last stop.

As for the broader recount, Judge

Tod Lindberg is editor of Policy Review.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Sauls noted in his ruling that the relevant statute clearly refers to contesting the "certification of election" or "the result of the election," not the partial result in certain counties—a hangover approach from the protest phase. In addition, a number of Democrats (for example, former Virginia Democratic party chairman Paul Goldman, in a string of brilliant e-mails as the controversy unfolded) argued cogently that insisting on a selective hand count wouldn't fly. Likewise, the issue of a standard for determining which ballot markings could count as votes was hardly obscure. Republicans, after all, were screaming from the beginning about the shifting standards in Palm Beach County and the differing standards from one county to another.

The Gore team had every reason to think it was going to have to deal with these two issues. Why not do so preemptively? Well, why make unilateral concessions? The statewide recount, which Gore did indeed offer Bush in a speech, was part of a political deal the quid pro quo of which was that Bush would accept manual recounts. Meanwhile, no standard for ballot markings is the next best thing to a statewide "dimpled chad" standard—which might have been a bit much to ask a court to impose.

Besides, there's always a chance you will get away with ignoring your problems. If you get the Florida Supreme Court to go along, maybe you get lucky and the U.S. Supreme Court decides to duck (witness the sublime imperturbability of Justices Stevens and Ginsburg). As it happened, the Florida high court wouldn't swallow the selectivity (at least on the "undervotes"), but it didn't care about the standards. Who's to say it might not have gone completely in the tank for Gore?

In the end, however, the Gore team's decision not to bring these issues forward and deal with them was a dreadful mistake. It only delayed their emergence to the point at which it would be fatal.

The Gore lawyers weren't the only ones harming the candidate they were trying to help. The Florida Supreme Court deserves special marks, too. The Gore team's confusion over the protest/contest distinction was abetted by the court's abrupt intervention to stop Katherine Harris from certifying the vote November 18, a decision in accord with the Gore lawyers' wishes. And the consequences of this rash step were worse than just delay. If the Florida high court hadn't intervened and delayed certification, the U.S. Supreme Court might well have found no reason to take the case. Its original reason for doing so was to look into the constitutional questions related to Article II and Title 3 (it wasn't interested, at that point, in the equal protection issue). Without a change in date, how could the Florida Supreme Court be said to be interfering with the Florida legislature's constitutional responsibilities? Cert denied.

The Gore team had every reason to think it was going to have to deal with these two issues. Why not do so preemptively?

It's also worthwhile to ask how the U.S. Supreme Court might have responded to a competent Florida Supreme Court reversal of Judge Sauls—one ordering a statewide manual reexamination according to specified standards of all ballots machines couldn't count, allowing sufficient time for appeal. That vitiates the equal protection problem, leaving *only* the question of Article II and Title 3. Clearly, three justices (Rehnquist, Scalia, and Thomas) might have wanted to hear the case. But it takes four to grant certiorari. The case would have been a tougher sell without the equal protection issues.

It's possible of course that the ad hoc fumbling of the Florida Supreme Court would still have landed its decisions before the U.S. Supreme Court—which is to say, that the idea the lower court could have competently crafted its rulings and remedies in order to avoid constitutional problems may be fanciful. It's also possible that, at the end of the day, Justices Kennedy and O'Connor would have joined Justices Rehnquist, Scalia, and Thomas if there had been no equal protection grounds on which they could draw in Justices Breyer and Souter. Kennedy and O'Connor didn't bother to clear up what they really think.

But they didn't join the Rehnquist opinion either. There is at least a chance that they would have accepted a recount had they been presented with a constitutional-looking scheme for one and had there been more time. That's something the Gore lawyers could have helped along. As for the misadventures of the Florida Supreme Court, that court did much (though not all) of its damage at the urging of Gore lawyers, not against their wishes.

It's possible of course that the Gore team began to doubt it could win a statewide hand recount with any but the loosest counting standards. Liberal counting in the Gore strongholds of Broward, Miami-Dade, and Palm Beach—and strict counting elsewhere—might have been their only hope, which would help to explain an approach that otherwise looks legally haphazard.

But it seems just as likely that Al Gore decided to set in motion an all-fronts politico-legal war: Put hundreds of lawyers into motion; give no quarter to your opponents; contest everything; delay whatever looks likely to harm you. The result was occasional tactical brilliance, but what now seems to have been a huge strategic blunder.

It's hard to say whether this will give comfort to Gore or add to his torments, but on the terms of the Supreme Court's ruling in *Bush* v. *Gore*, victory may have been within reach for the vice president, if only his lawyers hadn't gotten in their own way. ♦

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Equal Protection Run Amok

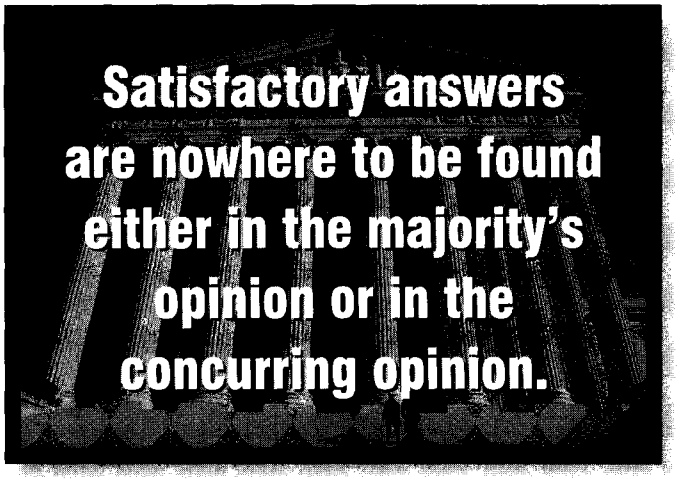
Conservatives will come to regret the Court's rationale for *Bush* v. *Gore*. BY JOHN J. DIIULIO JR.

BY CUSTOM, U.S. Supreme Court justices end even impassioned dissenting opinions collegially with the words "I respectfully dissent." That's how three dissenters, Justices Breyer, Stevens, and Souter, all signed off in *Bush* v. *Gore*. But the fourth, Justice Ginsburg, closed her opinion with a cold two-word punch at the majority: "I dissent."

Cold but correct, because Justice Ginsburg's dissent is resoundingly right on law and precedent.

Yes, on criminal law and other matters, Florida's supreme court judges too often act as ultra-liberal, activist, self-appointed legislators. They did so in their initial, disgraceful 7-0 groupthink ruling on the state's presidential vote-count controversy. No, I wouldn't rather still be listening to people debating dimpled chads. Sure, I'm glad the Court ended the Florida follies, and doubly glad that—cued by Vice President Al Gore, who was supremely patriotic and gracious in defeat—most Americans, including most of my fellow Democrats, now call George W. Bush *our* forty-third president-elect.

But still, to any conservative who truly respects federalism, the majority's opinion is hard to respect, and the concurring opinion, penned by Chief Justice Rehnquist and joined by Justices Scalia and Thomas, should be rejected in its entirety. The arguments that ended the battle and "gave" Bush the presidency are constitutionally disingenuous at best. They will come back to haunt conservatives and confuse, if they do not cripple, the principled conservative case for limited government, legislative supremacy, and universal civic deference to legitimate, duly constituted state and local public authority.



"In most cases," acknowledge Rehnquist, Scalia, and Thomas, "comity and respect for federalism compel us to defer to the decisions of state courts on issues of state law." There are, however, "a few exceptional cases," and "this is one." Why?

Why, suddenly, do inter-county and intra-county differences in election procedures, which are quite common in every state, rise in the Florida case to the level of "equal protection" problems solvable only by uniform standards (by implication, uniform national standards) and strict scrutiny from federal courts?

How can the conservative jurists on the Court find prima facie fault with what the Bush legal team disparaged as "crazy quilt" local laws and procedures? Why, in any case, weigh the alleged problem in Florida without taking cognizance of how election procedures vary from polling station to polling station and from county to county in, say, Pennsylvania? And why, in reversing a state's highest court for not following the U.S. Constitution, and for infringing upon the state legislature's authority, does the nation's highest court substitute its own resolution of the ultimate "political question" for the Constitution's explicit, black-letter reliance on state legislatures and, if need be, the U.S. Congress?

Satisfactory answers are nowhere to be found either in the majority's opinion or in the concurring opinion. As each dissenting justice stressed, the federal questions that emerged from the Florida Supreme Court's 4-3 decision were simply not substantial enough, and the Florida majority's opinion by no reasonable interpretation renegade or recalcitrant enough, to warrant anything like Rehnquist et al.'s outright, roughshod reversal.

As Justice Ginsburg noted, the Court "more than occasionally affirms statutory, and even constitutional, interpretations with which it disagrees," even with respect to administrative agencies. "Surely," she continued, "the Constitution does not call upon us to pay more respect to a federal administrative agency's construction of federal law than to a state high-court's interpretation of its own state's law. And not uncommonly, we let stand state-court interpretations of federal law with which we might disagree." "The extraordinary setting of this case has obscured the ordinary principle that dictates its proper resolution: Federal courts defer to state courts'

Contributing editor John J. DiIulio Jr. is the co-editor (with E.J. Dionne) of What's God Got to Do With the American Experiment?, *recently published by the Brookings Institution.*

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

interpretations of their state's own law." And, even if this were truly an equal protection case, the Court's majority opinion needlessly substitutes "its own judgment about the practical realities of implementing a recount" for the "judgment of those much closer to the process."

I would like to believe there was a time when conservatives would have instinctively recoiled at the way we have all now fallen into thinking of and battling for the presidency as if it, rather than the Congress, were constitutionally the first branch of our national government. There was a time when conservatives understood that the localisms of little platoons and county governments were good and to be preserved and protected by law and custom unless proven bad by experience. There was a time when conservatives knew that legislators, our "partly federal, partly national" republic's "proper guardians of the public weal," as Madison described them—not executives or judges—were best able to decide difficult or divisive matters of great civic moment. There was even, I suppose, a time when conservatives would rather have lost a close, hotly contested presidential election, even against a person and a party from whom many feared the worst, than advance judicial imperialism, diminish respect for federalism, or pander to mass misunderstanding and mistrust of duly elected legislative leaders.

If there ever was such a time, it has now passed, and conservatives ought to do what they can to bring the country back to this future. Regrettably, *Bush* v. *Gore* does no such thing. Desirable result aside, it is bad constitutional law. ♦

The Secret of Footnote 17

The Florida Supreme Court finally responded, but no one noticed. BY MICHAEL W. SCHWARTZ

LOST IN THE litigation shuffle that ended the presidential contest was the Florida Supreme Court's Monday, December 11, revised decision in *Palm Beach County Canvassing Board* v. *Harris*, the first case decided by it, and the case the U.S. Supreme Court remanded for clarification. This is a pity: Had the five-justice majority in *Bush* v. *Gore* taken account of the Florida court's December 11 opinion responding to its remand, it would have had a much better shot at persuading Justices Souter and Breyer to join the majority in finding not only that the recount was unconstitutional, but also that December 12 was indeed the "drop dead" date for the recount to conclude.

If called to the attention of Justices Souter and Breyer, it might well have persuaded them to join the majority.

The December 11 opinion is a revision and elaboration of the Florida court's original opinion issued on November 21. One revision made in the later ruling is the addition of the specific holding that, as a matter of Florida state law, "the time required to complete a manual recount must be reasonable." To that not very startling proposition, the opinion appends footnote 17, which puts a Florida state law gloss on reasonableness: It explicitly holds that, as a matter of Florida state law, "in the case of the presidential election, the determination of reasonableness must be circumscribed by the provisions of 3 U.S.C. sec. 5, which sets December 12, 2000, as the date for final determination of any state's dispute concerning its electors in order for that determination to be given conclusive effect in Congress."

In other words, as a matter of Florida law, December 12 was the date beyond which no recount was "reasonable."

While neither the footnote nor any other part of the opinion explicitly explains this holding, it seems clear enough that even the "count every vote" view of the universe must agree that that principle has to yield when efforts to count defective ballots expose the entire electorate to a legal

Michael W. Schwartz is an attorney in New York.

visit www.weeklystandard.com

Website for the nation's foremost political weekly.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

risk such as the loss of conclusive effect. Even accepting that there is an interest in trying to count the votes of people who failed to punch out their chads, it is surely a reasonable conclusion that that effort should not be permitted to create even the slightest risk that the votes of the people who did punch out their chads might be exposed to legal jeopardy. And footnote 17 is the Florida Supreme Court's acknowledgment of that truth.

Why is this ruling so important? Because if called to the attention of Justices Souter and Breyer, it might well have persuaded them that there was no legitimate way for the U.S. Supreme Court to insist that the deadline for the recount be extended past December 12. Unquestionably, there is no authority that would have permitted a federal court to second-guess that determination of "reasonableness" under state law. Certainly neither Justice Souter nor Justice Breyer cited any.

On this scenario, there might then have been not a 5-4 decision on the issue of "remedy," but the same 7-2 margin that the constitutional decision drew. To the extent the Court was forced to incur a cost in institutional legitimacy to bring Election 2000 to an end, that cost would have been substantially lower if the margin of decision had been 7-2 on all issues. Indeed, even Justices Ginsburg and Stevens might have found it more difficult to dissent had footnote 17 been called to their attention.

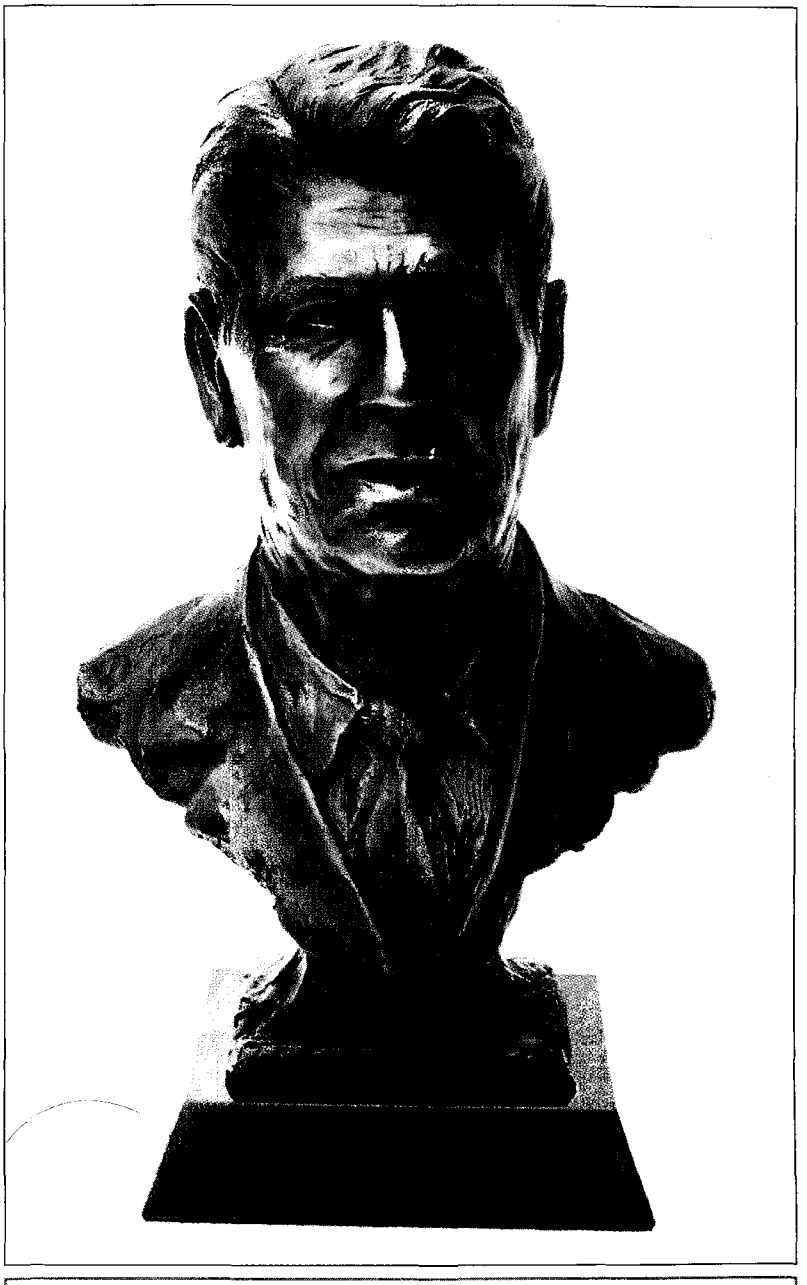
Footnote 17 has further significance, bearing in mind that it was added to the decision on December 11. It underscores the incoherence of the Florida Supreme Court's December 8 decision authorizing the recount to continue, a decision that pointedly did not contain a deadline. There is more than a slight sense here of the left hand not knowing what the right hand was doing. But if the December 8 and December 11 decisions are put together, it becomes reasonably clear that Chief Justice Wells's use of the word "chaos" in his dissent was no overstatement. ♦

Ronald Reagan

The 40th President of the United States

Special Limited Time Offer $1,995

(Bronze/Granite Base - 20" x 13" x 9" - $2,950 Value)



This fine art bronze sculpture of Ronald Reagan, entitled **The Great Communicator,** is a remarkable image of the President who was the catalyst of change. "No President in this century has accomplished more, or been so effective in changing the direction of government in ways that are both fundamental and lasting, than Ronald Reagan."

Order your casting today!

(Delivering Quality Fine Art to Collectors and Corporations)

View at www.FoxBronzeArt.com/Reagan.html

Order on line, e-mail FoxInternational@msn.com

or call **1-800-767-8851**

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

The *Real* Division in the Court

Neither the conservative nor the liberal justices were hypocritical. They just have fundamentally different views of federalism.

By Michael S. Greve

"So much for states' rights," *Washington Post* columnist E.J. Dionne sneered in commenting on the Supreme Court's ruling in *Bush* v. *Gore*. His comment encapsulated several weeks' worth of noisy complaints about Republican politicians. As the Gore camp portrayed it, the GOP was cynically selling out its own commitment to federalism when it talked trash about the Florida Supreme Court, ran to federal court at the drop of a chad, and nationalized the appointment of presidential electors—a matter the Constitution explicitly reserves to the states.

Conservative Supreme Court justices, as well, were said to be hypocrites. "It is ironic indeed," the *New York Times* harrumphed on the occasion of the U.S. Supreme Court's stay of the Florida vote count, "to see the very justices who have repeatedly ruled in favor of states' rights—Chief Justice William Rehnquist and Justices Antonin Scalia, Clarence Thomas, Anthony Kennedy and Sandra Day O'Connor—do an about-face in this case."

Conservatives could easily play this same game: Why did the *New York Times* not find it "ironic" that Laurence Tribe, Gore's Supreme Court counsel, increasingly sounds like a states' rights apostle, circa 1960? But that would be to miss a larger point. Both liberals and conservatives actually have coherent conceptions of federalism, and the justices pursue those conceptions with remarkable (though not unfailing) consistency. The conservative version reflects the constitutional structure and logic. The liberal version erodes that structure and perverts its logic.

Michael S. Greve is the John G. Searle Scholar at the American Enterprise Institute and director of AEI's Federalism Project. He is the author of Real Federalism: Why It Matters, How It Could Happen (AEI, 1999).

Bush v. *Gore* confirms the pattern. It would be silly to deny that partisan considerations influenced the parties' arguments before the Court, the debate over the case, and the justices' rulings. It is true, moreover, that seven justices, the five conservatives among them, embraced an equal protection argument that ought to worry constitutional federalists. But the case presents no ironic inversion of federalist positions. The parties fought, and the justices ruled, on their accustomed sides.

Two Federalisms

Every federalist system faces the challenge of ensuring national cohesion without centralizing the entire system of government. The Founders' solution was to limit the functions and powers of the national government, while ensuring its unqualified *legal* supremacy. Within its constitutional sphere of authority, the national government must be able to accomplish its purposes by acting directly upon the citizens, without the help or intermediation of the states (to say nothing of obstruction by them). National laws must have precedence over those of the states. The themes of functional separation and legal supremacy are central to constitutional federalism. They run through the records of the Constitutional Convention, the Federalist Papers, and the opinions of the Marshall Court.

This constitutional federalism is the federalism Clarence Thomas, Antonin Scalia, William Rehnquist, and (with significant reservations and qualifications) Sandra Day O'Connor and Anthony Kennedy have attempted to recapture. While their endeavor is constrained by political realities and decades of adverse precedents, the case law is beginning to reveal the basic contours of their federalist project.

In a series of decisions, beginning with the invalidation of the federal Gun-Free School Zones Act in *U.S.* v. *Lopez*

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

(1995), the five federalist justices have reestablished constitutional limitations on the national government's power. At the same time, a long line of cases, beginning with *Seminole Tribe* v. *Florida* (1996), has reasserted the sovereign immunity of state governments against private lawsuits brought under federal statutes. In *Printz* v. *United States* (1997), the five federalists invalidated Congress's attempt to compel state and local enforcement of federal gun control requirements. Justice Scalia's far-reaching opinion in that case was explicitly based on the Founders' intention: If Congress wishes to coerce citizens, it must do so directly, not by "commandeering" the states. In all these cases, the four liberal justices (Breyer, Ginsburg, Souter, and Stevens) dissented.

In *Bush* v. *Gore*, the four liberals invoke federalism and states' rights principally against the concurring opinion signed by Chief Justice Rehnquist and Justices Scalia and Thomas. The concurrence finds the Florida Supreme Court's ruling in violation of Article II of the Constitution, which provides that state *legislatures* shall determine the manner of appointing presidential electors. The liberals' invocation of federalism is misplaced, though: If the supremacy of federal law means anything, it means that state courts may not do end-runs around the federal Constitution.

The liberal justices' federalism can be traced to the Progressives. It is the federalism of the New Deal.

Still, one cannot dismiss the dissenters' objections as disingenuous or tactical. All four liberal justices have invoked states' rights with some passion and regularity. Justice Stevens in particular has been a vociferous defender of states' rights—for example, in cases concerning the federal preemption of state law (where the principle of federal legal supremacy tends to push the five conservative federalists towards a "nationalist" position).

The liberal justices, then, aren't mindless nationalists. Rather, they adhere to a "cooperative" or "administrative" view of federalism. Under that conception, the national government is *un*limited, or at least has no constitutional limitations that a court could recognize. It accomplishes its purposes not through legal supremacy but through institutional cooperation with the states. The states' role lies not in governing a separate sphere of authority but in their independent authority to administer federal schemes.

Such a federalism is not intrinsically incoherent. It is the federalism of Germany, Switzerland, and Europe, as Justice Breyer observed in his *Printz* dissent. Under this view, there is nothing objectionable in the federal commandeering of state officers.

"The fact is that our federalism is not Europe's," Justice Scalia replied to Justice Breyer, and as a matter of constitutional logic and structure, Scalia is right. Cooperative federalism does, however, have a political and judicial tradition in America. Its first judicial endorsement flowed from the pen of Justice Roger Taney, in an opinion celebrating the state enforcement of (of all statutes) the federal Fugitive Slave Act. Politically, cooperative federalism can be traced to the Progressives, who hoped to harmonize national aspirations with the virtues of localism. Cooperative federalism became dominant, both as a matter of political practice and judicial doctrine, under the New Deal.

As the political pedigree suggests, the shift from constitutional to cooperative federalism is tied to the growth of government. Constitutional federalism constrains government. It limits the national government's powers, and it exposes the states, which may wish to regulate in the vast realm beyond the national government's power, to competitive discipline: Excessive regulation may induce productive citizens (or businesses) to move to other, more hospitable states. Cooperative federalism, in contrast, unleashes the national government and enables state governments, through "cooperation" with each other and with the Congress, to establish national policy cartels that preclude citizens from voting with their feet.

Some legal scholars have argued that the justices' seemingly wavering pro- or anti-federalism opinions simply mask their pro- or anti-government preferences. Among the conservative justices, however, only Clarence Thomas can reasonably be suspected of harboring libertarian sympathies, while cooperativist Justice Breyer has inveighed in books and articles (though not in his opinions) against the excesses of federal regulation. The real, much deeper divide runs between constitutional constraint and democratic aspirations, a divide that ran through the *Bush* v. *Gore* opinions.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Constitutionalism is not per se anti-democratic. It insists that "We the People" ordain and establish the Constitution. The constitutional point, though, is to break, fragment, and temper democratic impulses through a system that institutionalizes intra-governmental rivalry, jealousy, and competition. Federalism, for a prominent example.

Democrats chafe under formalistic constraints, and they like cooperative federalism because it trumps those constraints. When government institutions become partners rather than competitors, they cease to frustrate the *demos* and instead provide it with multiple access points. The system, to be sure, remains too messy and fragmented to satisfy Rousseauean aspirations. Cooperative federalism, however, may be the closest possible American approximation of the European centralizing ideal.

In the course of the post-election campaign, we have been treated to relentless appeals to "the will of the people"—not as expressed through the ordinary, constitutional channels, but in the raw form of the national popular vote. The purveyors of this demagogy opened fire on institutions that embody constitutional federalism—prominently, the Electoral College—and hit bottom in the persistent demands, and the judicial attempts, to identify the voters who "intended" to vote for Gore, as distinct from those who actually did so by complying with the formality of punching a ballot.

When the Supreme Court's majority effectively halted the Florida Supreme Court's endeavor to "recover," as the Florida justices put it, the voters' true intent, Justice Ginsburg denounced the ruling as a lamentable breach with—cooperative federalism.

Of Judges and Judging

Justice Ginsburg's operative phrase, in fairness, is "cooperative *judicial* federalism," invoked twice in her dissent. Federal and state judges, no less than elected officials, are partners in a common enterprise, and that consideration bars federal interference with state adjudication in all but the most extreme circumstances. Writing in the same vein, Justice Stevens took the majority to task for endorsing the *Bush* plaintiffs' "lack of confidence in the impartiality and capacity" of the Florida judges.

Putting aside the immediate causes of that distrust, it bears emphasis that the Founders viewed state judges very much from James Baker's perspective—as partisan, parochial hacks. State courts would routinely favor their own citizens over those of other states, which is why such "diversity" cases fall in the jurisdiction of federal courts. State courts may, in the ordinary course of deciding cases, adjudicate federal causes of action. The point of that arrangement, though, is not to empower the states but to extend the supremacy of federal law. State court applications of federal law are subject to Supreme Court appeal, and Congress is empowered to establish lower federal courts to handle federal cases if state courts should prove partisan and unreliable.

The Founders considered that event quite likely. "The fitness and competency of [state] courts should be allowed in the utmost latitude," Hamilton writes in Federalist 81. But the conciliatory gesture is followed by an apprehension that "the prevalency of local spirit may be found to disqualify the local tribunals for the jurisdiction of national causes." Moreover, "state judges, holding their offices during pleasure, or from year to year, will be too little independent to be relied upon for an inflexible execution of the national laws."

As if to earn this distrust, the state courts of the young nation soon began to obstruct federal laws under the guise of interpreting their own state laws. The Marshall Court overruled them. That early case is cited as a precedent by the *Bush* v. *Gore* majority, along with two civil rights era cases that overruled segregationist state court decisions under state law. Justice Ginsburg's dissent acknowledges the precedents, but proceeds to protest that *Bush* v. *Gore* "involves nothing like the kind of recalcitrance by a state high court that warrants extraordinary action by this Court." The Florida Supreme Court, Ginsburg writes, "surely should not be bracketed with state high courts of the Jim Crow South."

Perhaps repeated judicial attempts to stack the deck in a presidential election do not compare to the moral scandal of Jim Crow. But still the Florida Supreme Court made up its own election statute, in derogation of federal law; refused to respond to the U.S. Supreme Court's exhortation to observe the federal strictures; and then repeated the exercise. Just how much recalcitrance is too much?

How much collateral damage, moreover, does it take until the obstruction of federal laws and purposes, under the guise of state law interpretation, becomes a federal issue? Why, yes, Justice Breyer concedes, "the selection of a President is of fundamental national importance. But that importance is political, not legal." As a matter of law, the Florida Supreme Court is entitled to drive the country over a political cliff, and never mind Article II and statutory safe harbors.

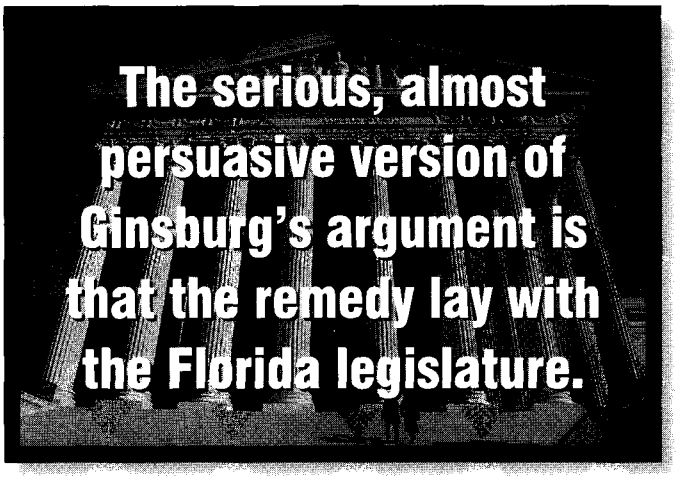
It is entirely fitting that this position should have been urged upon the Court by David Boies, a trial lawyer—one of a cast of characters who round up thousands of plaintiffs

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

across the country, sue corporations for several billion dollars in some forsaken Alabama county that neither the plaintiffs nor defendants have ever entered, and then protest federal tort-reform measures on the grounds that product liability lawsuits are strictly a matter between Alabama's citizens and judges. (The national importance is economic, not legal, as Justice Breyer might say.) Ruthless transgressions by parochial state judges and juries, however, were not the Founders' idea of federalism. They were the Founders' nightmare.

The Sovereign

Having extolled cooperative federalism, Justice Ginsburg ends her disquisition on Article II by invoking the real, constitutional federalism. The concurring justices' "solicitude for the Florida Legislature comes at the expense of the more fundamental solicitude we owe to the legislature's sovereign," meaning the citizens and the State of Florida as a political entity. "Were the [conservative] members of this Court as mindful as they generally are of our system of dual federalism," Justice Ginsburg chastises, "they would affirm the judgment of the Florida Supreme Court."



The serious, almost persuasive version of this argument is that the remedy for the Florida court's transgressions lay with the Florida legislature, rather than the U.S. Supreme Court. But that is not Justice Ginsburg's argument. The only hint at the Florida legislature's powers appears in the majority's per curiam opinion, not in Ginsburg's or in any other dissent. With that omission, Ginsburg's solicitude for state sovereignty collapses into an alarming embrace of judicial supremacy.

In its two decisions, the Florida Supreme Court trashed an entire structure of government. It emasculated canvassing boards by subjecting their determinations to *de novo* judicial review (excepting the boards that had manufactured additional Gore votes, which the court ordered to be certified without any review). The court twice overruled perfectly sensible determinations by the secretary of state (one made pursuant to established state law; the other, pursuant to the Florida Supreme Court's own deadline). The court twice supplanted the legislature's election laws with its own rules and deadlines.

A comparable legal action by the Florida legislature, the U.S. Supreme Court learned from Boies during oral argument, would have constituted an impermissible postelection change of the laws; coming as it did from the Florida Supreme Court, it constituted mere "interpretation." When the Florida legislature threatened to exercise its rightful authority to appoint a slate of electors, democratic (and Democratic) partisans hysterically denounced the attempt as—well, an undemocratic interference with the judiciary's recovery of the voters' true intentions. Nothing and no one, no rule and no structure, must stand between the will of the people and its vicarious interpretation by the judicial committee for public safety.

That is the sovereign to whom, in the dissenting Supreme Court justices' world, we owe solicitude and unquestioning obedience. "It is confidence in the men and women who administer the judicial system," Justice Stevens writes, "that is the true backbone of the rule of law."

The rule of law is in trouble, and *Bush* v. *Gore* provides little comfort. The justices' unanimous remand of the Florida Supreme Court's first ruling expressed concern over the state court's reckless disregard for Article II and the federal safe harbor provisions. In the end, though, only three justices were prepared to follow the constitutional argument, while seven members of the Court resorted to an unprecedented, free-floating equal protection argument that invites federal regimentation for almost any reason.

One may hope that the equal protection part of *Bush* v. *Gore* will prove a ticket for this day and train only. The deeper and true problem is the assault on constitutionalism. That assault reflects long-rampant misconceptions, and it comes itself in the constitutionalist garb of federalism, judicial restraint, and the rule of law. For that reason, it cannot be countered with facile slogans about "judicial activism," "states' rights," and the like. We will have to remind ourselves of some long-forgotten truths about what it means to live in a constitutional, federal republic. If the crisis just passed helps us to do so, it will have done some good. ♦

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

After the Bursting of the Dot-Com Bubble

As the aftermath of the Dutch tulip craze suggests, mania doesn't necessarily end in depression.

By Irwin M. Stelzer

Buried deep in a recent issue of the *Wall Street Journal* is an interview with venture capitalist Bill Davidow. As the crash in the value of Internet companies sours investors and fills the financial pages with tales of impending doom, Davidow has taken to reminding all who will listen, "There was a tulip business even after the tulip mania." Which prompted me to dig out my copy of Mike Dash's *Tulipomania: The Story of the World's Most Coveted Flower & The Extraordinary Passions It Aroused.*

Davidow is right, and in the post-bubble history of the tulip business may lurk some clues to the fate of the surviving dot-coms, and the impact of the revolution they and their now-departed brethren have wrought.

The speculative frenzy in tulips that seized 17th-century Holland collapsed in 1637, but of course the trade in bulbs did not disappear. Prices fell, but in a few years "the trade regain[ed] some sort of equilibrium. The speculators had gone, but there was still a market for the flower." But at far lower prices, with the specialty bulbs doing better than the garden variety tulip. And it is not to stretch the analogy between tulip-growing and the dot-com business to cite Dash's observation that "most of the new and inexperienced growers who had been attracted by the prospect of rich profits gave up the business or were driven out."

Eventually, bulb growers learned how to turn a profit again. They converted their business from a seasonal one to one that could produce all year round—something e-tailers who have survived the recent bloodbath are starting to figure out. They learned how to combat the viruses that periodically destroyed their business (something Microsoft et al. have still to learn). They learned how to compete with other varieties of flower—just as e-tailers have been learning how to compete with bricks-and-mortar retailers.

In short, although the past is not necessarily prologue, history suggests that there is life after a financial bubble bursts. For one thing, investors have short memories: Tulipomania was followed by a spurt in the prices of hyacinths in the 18th century, and by one in dahlias in 1838. Indeed, as recently as 1985 the price of the red spider lily soared in China, reaching $50,000 for the most coveted varieties, "an amount that puts even the sums paid at the height of the Dutch tulip craze to shame," according to Dash.

For another, the bursting of the dot-com bubble does not mean that the new information infrastructure has disappeared. The fact that the business graveyard is overflowing with the corpses of dot-coms tells us less about the future role of the Internet in our economic lives than it does about the propensity of some investors to irrational exuberance. It should come as no surprise that companies that not only failed to earn any money as their customer lists swelled, but touted their mounting losses as proof of their success in growing their businesses, should eventually fall from investor favor.

Nor should it be surprising that inexperienced entrepreneurs, whose sole lasting contribution to American life has been the destruction of the business suit, found that there is more to running a successful business than attracting the adulation of equally young and casually clad reporters for trade magazines.

Finally, it should not surprise us that the accumulation of experience in this era of the so-called "new economy" has led to a more sober appraisal of the impact of new technologies on the American economy. We now know that the massive investment in new technologies has not removed the speed limit on economic growth; but we also know that investment in the new information infrastruc-

Irwin M. Stelzer is a contributing editor to The Weekly Standard *and director of regulatory studies at the Hudson Institute.*

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Hulton-Deutsch Collection / CORBIS

Dutch women packing tulips: The industry survived the speculative bubble.

ture has increased the sustainable annual growth rate from something like 2 percent to closer to 4 percent. That's not as revolutionary as some of the more strident "new economy" advocates have been claiming, but it is enough to make an unemployment rate of only 4 percent sustainable in the long run without setting off a round of wage-price inflation.

What we have, then, is what might be called the enduring aftermath of the dot-com bubble—a new way of doing business, greater productivity in important sectors of the economy, lower transaction costs as buyers and sellers come together without middlemen, new exchanges in which everything from electricity to broadband capacity can be traded efficiently, and an increase in consumer power to resist price increases. These are permanent changes. And the improvements in productivity and efficiency will not be reversed, even if the economy slows significantly, as it now is deemed likely to do.

Perhaps most important of all of our new knowledge, arguably even more important than the new technologies left with us after the dot-com bubble burst, is our increased understanding of the policy tools available to cope with economic downturns.

Investors know that Federal Reserve Board chairman Alan Greenspan can stimulate the economy by lowering interest rates, which he has plenty of room to do since rates are still high in real terms. After all, he successfully prevented a major economic downturn after a more serious stock market plunge in 1997 by easing monetary policy.

Investors know, too, that president-elect George W. Bush's team aims to ease fiscal policy by persuading Congress to go along with a tax cut. Dick Cheney made that clear when he told reporters that the incoming managers of our fiscal policy fear that we are on the verge of a recession, a position Bush's key economic adviser, Larry Lindsey, has held since he transferred his own investments into cash some two years ago.

Bush will use the current slowdown, and the threat of a hard landing, as a reason to cut taxes, now. To get the support of moderate Democrats, he may have to skew the cut in favor of lower income groups. But the new money that these consumers find in their pockets is more likely to be spent than it would be if the beneficiaries were the higher income groups that the Bush team, left to its own devices, would more greatly favor. The benefits would trickle up.

That combination of looser monetary and fiscal policies can go a long way towards preventing this slowdown from becoming a recession. We may have to learn to live the next few years with growth in the 3 percent annual range rather than the more fevered pace of recent years. But that would have been considered economic nirvana not so long ago.

And just as surely as you can have tulips now whenever you please, there will indeed be life after the bursting of the dot-com bubble. It will be a life enriched by the technologies introduced by those dot-coms, even the ones that didn't survive long enough to reap the rewards of their technological genius. ♦

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Join us for the Ultimate Vacation: The Freedom Cruise

Makes the perfect conservative gift!

Featured Speakers:
HUMAN EVENTS' own **Terry Jeffrey**, Regnery best-selling author **Barbara Olson** and Bush lawyer **Ted Olson**, **Wayne LaPierre, Oliver North, Dinesh D'Souza, Ron Robinson,** and **Kellyanne Fitzpatrick.**

HUMAN EVENTS, National Rifle Association, Freedom Alliance, and Young America's Foundation cordially invite you to attend our Sixth Annual Freedom Cruise, sailing to the southern Caribbean February 24–March 3, 2001, for a week of stimulating discussions, vigorous debate, and relaxation aboard Royal Caribbean Cruise Line's *Grandeur of the Seas.*

Enjoy interactive workshops, seminars, and panel discussions throughout the week featuring our celebrated guest speakers.

Also enjoy the opportunity to dine with our speakers and other like-minded conservatives each evening.

A limited number of cabins in a variety of pricing options has been reserved on behalf of the Freedom Cruise, but accommodations are booking up quickly.

Cabin prices (double occupancy) range from $1,811 to $5,335 per person.

ITINERARY

Date	Day	Ports of Call	Arrive	Depart
Feb. 24	Sat	San Juan, Puerto Rico		10:00 pm
Feb. 25	Sun	At Sea - FA/YAF/NRA/HE Seminars		
Feb. 26	Mon	Oranjestad, Aruba	8:00 am	1:00 am
Feb. 27	Tue	Willemstad, Curaçao	7:00 am	6:00 pm
		Morning FA/YAF/NRA/HE Seminars		
Feb. 28	Wed	At Sea - FA/YAF/NRA/HE Seminars		
Mar. 1	Thur	Philipsburg, St. Maarten	8:00 am	6:00 pm
Mar. 2	Fri	St. Thomas, USVI	8:00 am	6:00 pm
		Morning FA/YAF/NRA/HE Seminars		
Mar. 3	Sat	San Juan, Puerto Rico	8:30 am	

To receive your free cruise information packet, please call 1-800-460-3480 or visit our "Freedom Cruise" website at http://www.tcacruise.com/freedomcruise2001/

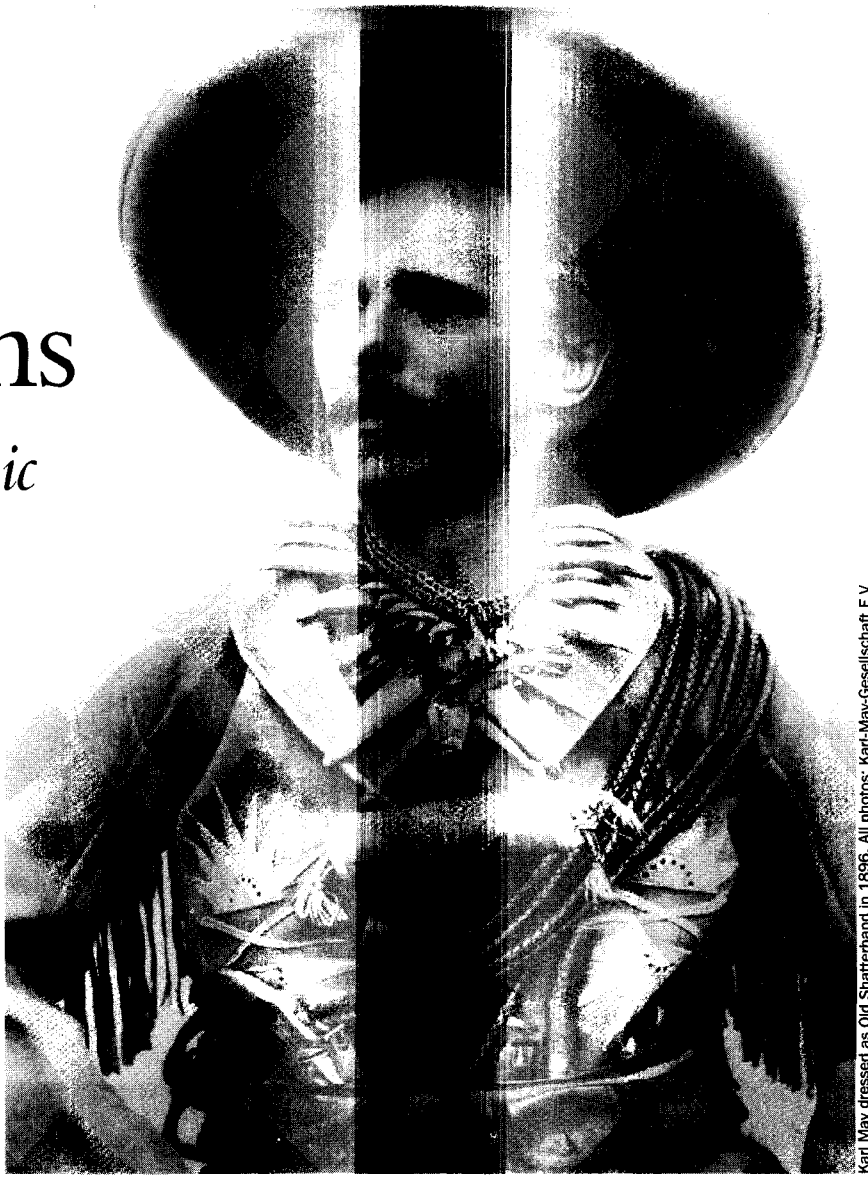
Human Events
The National Conservative Weekly

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Cowboys *und* Indians

Karl May's Teutonic American West

By Ben Novak



Karl May dressed as Old Shatterhand in 1896. All photos: Karl-May-Gesellschaft E.V.

At the 1949 Goethe Bicentennial Celebration in Aspen, Colorado, two tribes of American Indians staged a mock battle for the foreign visitors. In the audience were Albert Einstein and Albert Schweitzer, both then in their seventies. At the end of the battle, when one of the Indians raced across the field on his horse, Einstein poked his elbow into his friend's side and pointed excitedly. "Do you see that Apache on the black mustang? Couldn't he, in reality, be a grandson of the Great Chief?"

Schweitzer knew precisely what Einstein meant. The Great Chief remains to this day the most famous American Indian in German history: He is Winnetou, "the Red Gentleman," son of Intshu-tshuna, and chief of the Mescalero clan of the Apaches. But, more important, the Great Chief is blood brother to "Old Shatterhand," the eighteen-year-old German university graduate who—in a series of more than thirty novels by Karl May—came to the wild west of America in 1860.

Karl May published the three volumes of *Winnetou: Der rote Gentleman*, his most famous novel, in 1893. Einstein was fourteen at the time, and Schweitzer eighteen, but for them both, Old Shatterhand and Winnetou became more real than any living westerners could ever be. In an interview after the mock battle, Einstein continued: "I am not alone in my affection for Old Shatterhand. Did you know that my whole adolescence was lived under his spell? Yes, actually, he is still very important to me, and I am not the least bit ashamed of it." Schweitzer was even more effusive, crediting Karl May with the inspiration for his life's work: "He taught all of us wild and coarse roughnecks to see in our fellow man a brother in Christ."

Einstein and Schweitzer were hardly alone. May's novels have sold more than a hundred million copies in German (and an estimated eighty million more in translation). Hermann Hesse called May's works "indispensable and eternal." Carl Zuckmayer, the great German playwright, named his daughter Winnetou. The fifth winner of the Nobel Peace Prize, Bertha von Suttner, sitting at May's desk after his death in 1912, broke down and declared: "If I had written but one of his books, I would have been able to accomplish more."

The son of a weaver, Karl May was born into a desperately poor family in 1842. Only four of his fourteen brothers and sisters survived infancy. May himself suffered from such extreme malnutrition as a child that he was blind for the first four years of his life. But this became something of a blessing, for his grandmother, into whose care he was placed by a frequently absent mother, read pulp adventure stories to him. His father was a brutal alcoholic, but he saw some promise in this one son and, despite the hardship, saw to his education.

Bad luck, however, dogged the weaver's son, poisoning his schooling and destroying his teaching career. While a student, he was accused of stealing candle wax from the chapel in school and nearly expelled. After graduation, he lost his first teaching job when his landlord accused him of standing too close to his wife. He lost his second job when his roommate lent him his watch and then had him arrested for

A recent Ph.D. in German history, Ben Novak practices law in State College, Pennsylvania.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

stealing it. Sentenced to six weeks in jail in 1862, May, as a convict, was forever barred from teaching. Falsely accused, improperly convicted, the young man felt he had no choice to become what society labeled him—entering a life of crime, as a result of which he spent eight of the next twelve years in prison.

It was there in prison that he began to dream of writing. Upon his release in 1874, he found work as an editor and began churning out magazine stories, taking breaks only to consult scores of travel accounts and reference books for the geography, customs, and languages of the locales in his stories. From short stories he turned to the serialized novels that filled the pages of popular magazines and brought him fame. By the time of his death in 1912, he had sold more than 1.6 million copies—a phenomenal number for the time.

All of May's adventure stories were written in the first person, and the hero's name was always some variant of Karl—which led the public to assume that they were true accounts of his experiences. Soon May began to believe it too. In his youth he had written, "I myself must become a fairy tale—I personally, my own ego." He toured Germany dressed in the costumes of the characters in his books, recounting "his" adventures to adoring audiences. A whole generation of youth came to sit at his feet and believed him to be a genuine hero.

In 1900 the deception was discovered, and May became the object of one of the most vigorous hate campaigns in the history of German publishing. The initial—and accurate—accusations of fraud by the press quickly led to other—and false—accusations that he was a "sexual pervert" and "corrupter of youth." (These charges arose from lurid passages added to his stories by his first publisher; writing at lightning speed, the author had never bothered to read his own published work.) May spent the last dozen years of his life bringing libel suits. In the end, he won, but the ordeal drained him, and he died of a fever in his home in 1912.

The attacks on May as a fraud did nothing to slow his sales. Though often described as the epitome of nineteenth-century, Wilhelmine values, his books survived the First World War and continued as bestsellers through the Weimar Republic. He was popular with Catholics, Protestants, and Jews; Communists, monarchists, and republicans. Sales of his books rose to 4.4 million by 1926. The popularity of May with everyone from Thomas Mann to the socialist leader Karl Liebknecht did cause some Nazis to attempt to have his works banned. Copies of May's novels were thrown onto the bonfires in Goebbels's book burnings of 1933—until it was learned that the Führer was also a fan of Old Shatterhand, whereupon *Winnetou* went to the head of the National Socialist teachers' list of recommended books.

A signed publicity photo of Karl May in 1907

Not even Hitler's praise could destroy May's postwar popularity, though it did result in the banning of the novels in East Germany and several other countries behind the Iron Curtain. (When Communist Bulgaria lifted its ban on Karl May in 1977, the first printing of 300,000 copies sold out in a single day.)

"May has advanced," wrote *Der Spiegel* in 1962, "to a kind of *Praeceptor Germaniae* whose influence is greater than that of any other German between Johann Wolfgang von Goethe and Thomas Mann." In 1969, the Karl May *Gesellschaft* formed and quickly became—with more than two thousand dues-paying members—perhaps the largest single-author literary society in the world (setting aside the loose-knit collection of "Baker Street Irregulars" and other Sherlock Holmes societies that dot the globe).

More than two hundred Cowboy and Indian clubs, boasting more than fifty thousand members, flourish in Germany, actively celebrating Karl May's version of the American West. You can see the May touch everywhere. At the height of the Cold War, an American soldier went AWOL from a base in Germany, stole a car, and kidnapped a West German couple. The incident aroused considerable public outrage, and the court martial was opened to a host of German journalists. The victims testified to their ordeal, and the case was proceeding toward a heavy sentence—when the defense attorney casually mentioned that the defendant was an American Indian. The public explosion amazed the military authorities. Suddenly the press was filled with stories about the "Red Man's Plight." Across Germany, articles and editorials mourned how difficult it must have been for a "son of the wild prairies" to be confined to barracks life. Petitions for acquittal poured in to the judges. Even the kidnap victims reversed their stance to plead for their abductor. The United States ambassador made Karl May required reading for embassy personnel.

Karl May's *Collected Works* fill eighty-two volumes. More than thirty are novels set in the American southwest both before and after the Civil War, including such titles as *Winnetou's Heirs*, *Old Surehand*, and *Old Firehand*—all of which feature first-person accounts of Old Shatterhand's adventures. A second group of May's novels involve the adventures of the author as Kara ben Nemsi ("Karl the German") who travels with his trusty sidekick Hadji Halef Omar in the decaying Turkish Empire of the late nineteenth century. In his last years, May also wrote a

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

series of mystical adventures set in imaginary lands, which critics call his best works. But it is his first-person stories of Old Shatterhand and his blood brother, the noble Apache chief Winnetou, that have earned him the undying loyalty of his German readers.

Rousseau, with his vision of the noble savage, may have been responsible for Chateaubriand's novels *Atala* and *Les Natchez*, and other early European attempts to imagine the pristine American west. But it was James Fenimore Cooper's *Leatherstocking Tales* in the 1820s that broke the dam. By the 1850s, William Cullen Bryant reported, everyone in Europe was reading translations of Cooper. Works by native Europeans quickly followed. Charles Sealsfield, Friedrich Gerstäcker, Friedrich Armand Strubberg, and Balduin Möllhausen published almost four hundred volumes of popular stories, novels, travelogues, and reports of exciting adventures in the arcadia of America. In almost all these stories, the Indians were portrayed as the last noble race, possessing an Edenic closeness to nature and being driven to extinction by the greedy and merciless "civilization" of the white men.

But it was left to Karl May to give the drama its archetypal formulation:

> Yes, the Indian race is dying. From the Tierra del Fuego on the southern tip of South America to far beyond the North American Great Lakes, the bleeding giant lies stretched out, thrown to the ground, crushed, trampled on by a fate that knows no pity. He resisted it with all his might but in vain. His strength is ebbing. Life lingers on, but the convulsions which occasionally shake his body announce his approaching death.

Into this world comes Karl May's narrator—named, of course, "Karl"—a young German writer seeking adventure. Arriving in St. Louis to work as a tutor for a German family, he meets the famous gunsmith Mr. Henry, who notices him because he reminds him of his son who was killed in an Indian raid. Mr. Henry tests the young German and finds that he excels at marksmanship and horse riding. He judges that Karl—Americanized to "Charley"—is

Above: Karl May posing as his German-in-Arabia character, Kara ben Nemsi.
Below: as his German-in-America character, Old Shatterhand.

born to become a "Man of the West" and finds him a position on a surveying team for the new railroad that will take him deep into the prairies. Mr. Henry then gives him the guns that will become his trademarks: the *Bärentöter* and the *Henrystützen* (a bear rifle and a twenty-five-round repeating carbine).

As he heads off into the West, Charley is taken under the wing of an

experienced but comical character, Sam Hawkens, whose role is to teach him the secrets of the savanna. Soon the pupil far outdistances his teacher. He begins by knocking out a much bigger man with a single blow that earns him the nickname of "Old Shatterhand." He saves Sam from an onrushing buffalo, captures a wild mustang, and takes on a grizzly bear single-handed.

But that is only the small stuff for the Teutonic *über*-cowboy. He accepts a challenge to fight to the death with the most experienced knife-fighter of the Kiowa tribe—a giant named Lightning-Knife—even though he has never fought with a knife before. Sam thinks it's certain death, but Old Shatterhand defeats Lightning-Knife by logically inferring from a careless remark what the Indian's first move will be, deftly countering it, and killing him in two quick strokes.

After Karl and Sam are captured and sentenced to death by Winnetou's tribe of Apaches, Old Shatterhand, by a clever ruse, escapes, saves Sam, earns the respect of Winnetou's father, and becomes Winnetou's blood brother. Winnetou now replaces Sam as Old Shatterhand's teacher, and he takes the young foreigner through another period of learning how to see, think, and reason like those close to nature. As a result, the German and the Indian together outguess and outwit all their enemies, and can even read each other's mind. They become more than blood brothers, with an almost homoerotic love and a mental bond that makes them inseparable.

Then begins a series of adventures following the trail of the evil Santer who has killed both Winnetou's father and sister. At the end, Winnetou dies in the arms of Old Shatterhand, felled by another Indian's bullet. But he leaves a message for Old Shatterhand that, when ingeniously deciphered, allows him to defeat Santer's plans and avenge the deaths he had caused.

Great literature this isn't, but—like *Riders of the Purple Sage* or *The Hound of the Baskervilles*—it is popular fiction of a high order. So why has it never found much of an audience in the new world

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

in which it is set? There are two translations of *Winnetou* currently in print in English: a recent republication of Michael Shaw's translation, and David Koblick's translation of volume I. Both are substantial abridgments. Koblick concentrates on the action, omitting most of the explanations of Old Shatterhand's reasoning and flattening out the mystical passages. Shaw attempts to convey both the style and flavor of the original, and has by far the more faithful rendering.

Six of May's other novels have been translated into English: his later mystical work *Ardistan und Djinnistan* (the book most praised by critics) and five of his adventures as Kara ben Nemsi in the Middle East. (All were published in the 1970s by Seabury Press as part of an ambitious project to print May's *Collected Works*; the project was abandoned when expected sales failed to materialize.)

But despite these American editions, May remains virtually unknown in the United States. Though his works have been translated into thirty-nine languages, English might as well not have been one of them. Part of the problem is tone. Take, for example, the opening paragraphs of *Winnetou*—and, as you read it, keep in mind that this is probably the most widely read passage ever written in German:

> Dear Reader! Do you know what the term "greenhorn" means?... A greenhorn takes a raccoon for a 'possum and the prints of a turkey for the tracks of a buffalo.... When he is pushed by a Paddy, a greenhorn will run to complain to the Justice of the Peace, instead of shooting the man dead on the spot in true Yankee fashion.
>
> A greenhorn will hesitate before putting his dirty boots on the knees of his fellow traveler, and he refuses to slurp his soup with the wheeze of a dying buffalo as his companions do. Because he believes in cleanliness, a greenhorn will carry a bath sponge, a scrub brush and ten pounds of soap for a day trip out on the prairie. He sticks his bowie knife in his belt so that when he bends over, it sticks him in the thigh.... He makes a campfire that flares up to the treetops and then, when the Indians kill him, wonders how they could have found him.
>
> A greenhorn is—well, a greenhorn. And that's what I was back then.... Young as I was, I hadn't yet realized that school learning just doesn't teach one much about life. I had a lot to learn.

If this attempt by May to make the *reader* his adoring sidekick doesn't sound stilted, then German must be your native tongue. This is not the normal idiom of an American western (though it may sound right to a German contemplating immigration). Still, even for an American reader, the stories themselves are exciting. The *Winnetou* novels are a fun and fast-moving set of adventure tales quite the equal of the bestselling westerns of Zane Grey, Max Brand, and Louis L'Amour.

May's sense of drama is not individual and personal, but symbolic and cosmic. Within his cosmic drama of a brave, noble, and innocent people being driven from a pure and beautiful land, the role of the hero is to establish in the American West a new Round Table of all the "chivalrous knights of the endless prairies." Old Shatterhand is a Christian knight on the savanna.

One result of this reinvented Arthurian romance is that many of the events in May's novels seem not only highly implausible but almost mystical. This is especially conspicuous in May's later fantasy novels, of course, but in all his works there abound events and coincidences that are unbelievable, unless one believes in God's divine providence for his holy knights—or for May's Siegfried in buckskins. It's one thing to find that providence in Geoffrey of Monmouth or Chretien de Troyes, *Parsifal* or *Tristan*. But Americans are not used to finding it in Dodge City. ♦

Disappearing Genius

The strange life of Leon Theremin—inventor, musician, spy. BY RICHARD KOSTELANETZ

Even after he disappeared from New York in 1938, Leon Theremin remained one of the legendary figures in modern music. I remember asking the great musical lexicographer Nicolas Slonimsky in the late 1980s what happened to Theremin. He didn't know, though he reported that Dmitri Shostakovich had told him sometime in the 1970s that Theremin was still alive, but Shostakovich could not reveal where.

Theremin
Ether Music and Espionage
by Albert Glinsky
Univ. of Illinois Press, 464 pp., $34.95

In the 1984 edition of *Baker's Biographical Dictionary of Musicians*, Slonimsky could write only that his sometime friend was "still active in 1977." Few figures of Theremin's stature in any modern art have so completely and inexplicably vanished.

Richard Kostelanetz recently completed his second collection of essays on music, More On Innovative Music(ian)s.

Of course, part of the question is why Theremin was remembered at all. Born in St. Petersburg in 1896, he had invented at the end of World War I an early electronic sound instrument, eventually named after himself.

The theremin differed from previous instruments in that it was not directly touched. Rather, the performer moved his hands in the air around two thin electrified poles. One antenna, customarily extended vertically, controlled pitch; the other, customarily horizontal, controlled volume. Theremin later invented a rhythm machine and a proto-television. (Typically, the Soviets wanted the last not for consumers but for border security.)

Thanks to supportive entrepreneurs, Theremin went west, first to Berlin and

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

then to New York, where he acquired a patron, who rented him a townhouse at 37 W. 54th St., and new business partners, who formed the Teletouch Corporation. Several composers, awed by the new instrument, wrote pieces for it, while young musicians, most prominently Clara Rockmore, performed on it in live concerts. RCA contracted one of Theremin's companies to manufacture it, but the company failed commercially, simply because the theremin was too hard to use. Just before his disappearance, Theremin married a young African-American dancer, Lavinia Williams, who spoke several languages including Russian.

Why then did he disappear from New York in 1938? Slonimsky suggested that Theremin had two wives and, feeling some heat, returned to his native Russia. But a feature-length documentary film produced in 1993 by Steven Martin, *Theremin*, repeated Lavinia Williams's claim that her husband had been abducted by the KGB.

Albert Glinsky's new biography *Theremin: Ether Music and Espionage* disputes both these stories. After more than a decade of research, Glinsky discovered that Theremin had maintained contact in New York with Soviet agents (to whom he gave technical information). Always planning to return to Russia, he never applied for U.S. citizenship, even after marrying an American. His companies were failing badly, his personal debts were mounting, and he simply boarded a Soviet freighter in a New Jersey port and sailed home.

At a time when prominent European artists and intellectuals were desperately trying to move west, Theremin headed east—eventually, way, way east, for once he returned to Russia he found himself promptly imprisoned and exiled to a Siberian labor camp. He could escape America as a failed capitalist, but he couldn't escape Stalinism. When Soviet chiefs recognized his genius, he was assigned to a prison complex for technicians.

Apparently, he did good work during the war, for he was released in 1947 and given a "secret" Stalin Prize. Once on his own, Theremin decided to work for another secret Soviet agency known as a "mailbox," because its building had no address and its workers were forbidden contact with outsiders, even their relatives. Here he designed miniature security machines (which responded, as his musical instrument did, to changes in the air around them) and eavesdropping devices. One was successfully installed in the American embassy; another, in Stalin's own apartment. No wonder his friends in the West thought him dead (and Shostakovich couldn't say where he was).

Curiously, his instrument survived in America, not only in Clara Rockmore's occasional concerts but in the soundtracks to horror and science-fiction films, where it provided otherworldly sounds with sliding pitches. The pioneering synthesizer manufacturer Robert Moog began his electronic-instrument career by producing in the late 1950s a homemade theremin. In a mid-1960s rock group called Lothar and the Hand People, "Lothar" was not one of the humans but the theremin they featured in their songs. The instrument memorably accompanies a cello in the Beach Boys' 1966 classic "Good Vibrations." Such groups as Led Zeppelin, the Pixies, Portishead, and a duo called the Kurstins have similarly used theremins.

All pictures: Univ. of Illinois Press.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

To the surprise of everyone, Leon Theremin reemerged in 1989, now in his nineties, initially to be honored at electronic music festivals. The filmmaker Steven Martin brought him to New York for a dazed tour of Times Square and a memorable reunion with Clara Rockmore. (The final scene of the film has them walking arm in arm down 57th Street to the sound of "Good Vibrations.")

What makes Glinsky's *Theremin* a first-rate biography is his elevating our knowledge of a previously hidden unique figure. This is not a reinterpretation of familiar history but the product of original research, including the definitive interview with Theremin, just before his death.

The biography it most resembles in this respect is Reynold Weidenaar's *Magic Music from the Telharmonium* (1995), which likewise rescues from obscurity the previously under-understood development at the beginning of this century of the first musical synthesizer, serviced by a private cable network. (Its inventor, Thaddeus Cahill, later joined his brothers in developing night lights for baseball stadiums.) The obstacle that makes both these books special is that first-rank musical technologists are more difficult subjects than composers.

I remember hearing leftist friends speak of Alger Hiss's "wasted life, given what he could have done," implicitly blaming anti-communism; but, of course, more lives were wasted by communism, not only in the sense of being prematurely ended but in being forcibly assigned to a narrow range of tasks.

My hunch is that, had Theremin stayed in America, he would have joined his countryman Vladimir Zworykin in developing television or, at least, become an émigré professor at an institute of technology—an acoustic analogue to Harold Edgerton, the M.I.T. engineer who invented the strobe light.

What additional inventions could have come from Theremin's mind, had he stayed in New York, are beyond speculation. The cause of his loss was his own choice to return to the Soviet Union after he had lived in the West, but the loss itself is real: Communists ate the lives even of those they didn't kill. ♦

Stalin's Agents

None dare call it spying.

BY ROBERT D. NOVAK

The president's most trusted adviser is a Soviet agent. The nation's leading nuclear scientist is turning secrets over to the Kremlin. The entire federal government is honeycombed with Communists. American intelligence agencies are infested with Russian spies. Soviet agents are working in the offices of renowned American columnists, and one beloved journalist is actually on Moscow's payroll.

Robert D. Novak is a nationally syndicated columnist for the Chicago Sun-Times.

This isn't the plot of a second-rate spy thriller. This is the actual truth about the astounding Soviet penetration of the United States during Franklin D. Roosevelt's administration, as carefully researched and dispassionately presented by Herbert Romerstein and Eric Breindel in *The Venona Secrets: Exposing Soviet Espionage and America's Traitors*.

The book was nearly completed when Breindel, who had served more than a decade as the editorial page editor of the *New York Post*, died in 1998 at the age of forty-two. Romerstein, an expert for the United States Information Agency and congressional committees on Soviet espionage and disinformation, finished the book.

Getting it published, however, proved no easy task. A mainstream publishing firm voided its contract—on the pretext of Breindel's death, but in reality because it could not deal with the exposure as traitors of such icons of the "greatest generation" as Harry Hopkins and J. Robert Oppenheimer. The conservative publisher Regnery stepped in to prevent *The Venona Secrets* from being spiked, but what is still in question is whether this work will get the attention it deserves.

The inspiration of this book was the release by the National Security Agency of intercepted and decrypted communications between Soviet spies and their spymasters. Given the code name "Venona," these messages, Romerstein and Breindel write, "are the mortar that holds together information from Soviet archives and U.S. government investigations. Together, they give a clear picture of Soviet World War II espionage against the United States." The impact of Moscow's effort was profound. Soviet influence in the Roosevelt administration is shown killing any chance for an early Nazi surrender to the Western allies. It hastened the Kremlin's development of the atom bomb, permitting Stalin to give the green light to the Communist invasion of South Korea. The result in each instance was heavy loss of life by American soldiers.

The Venona files have settled many arguments once and for all, silencing liberal claims that had persisted for half a century. The decrypted messages prove that Alger Hiss and Julius Rosenberg genuinely were spies. The first 1995 Venona release "sent shock waves through the ranks of the Rosenberg defenders." It also vindicates the two early sources about Communist espionage, Whittaker Chambers and Elizabeth Bentley. These former spies had become government witnesses after years of soul-searching, "only to be called liars by the Left and vilified in numerous books and articles." *The Venona Secrets* also demolishes the old

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

liberal saw that the Communist Party USA was just another political party. "Venona shows that most of the agents working for the NKVD during World War II were members of the Communist party; some were Party officials." That included party leaders Earl Browder and Eugene Dennis.

But Romerstein and Breindel combine the Venona files with other sources to make bold assertions. None is bolder than their treatment of Roosevelt's confidant Harry Hopkins, who has been canonized by mainstream historians as a hero gallantly battling chronic illness in the cause of winning the war.

In a section headed "Harry Hopkins—Soviet Spy," the president's top adviser is shown lobbying relentlessly to give tons of uranium to the Kremlin. When Soviet official Victor Kravchenko defected in Washington in 1945, Hopkins pleaded with Roosevelt to send him back to Russia. Instead of presenting to Stalin the American desire for a free Poland, Hopkins told the Soviet dictator "that the United States would desire a Poland friendly to the Soviet Union."

Hopkins's role was truly remarkable. Janet Ross, Moscow correspondent for the Communist *Daily Worker*, was an NKVD agent who in 1943 reported U.S. ambassador William Standley's criticism of Soviet policy made to a small group of American journalists. Only two days later, Hopkins "pressed for the removal of Ambassador Standley on the grounds that the ambassador had lost Stalin's confidence." Hopkins earlier had insisted, over the objections of Army intelligence, on sending pro-Soviet military officer Philip Faymonville (called by his colleagues the "Red Colonel") to Moscow as a lend-lease administrator.

Could it have been, the authors ask, that Hopkins was "an unconscious agent" who did not realize that his left-wing ideology was drawing him toward treason? Ishak Akhmerov, a Soviet spymaster during World War II, delivered a lecture to KGB officers during the 1960s in which he mentioned Alger Hiss but called Hopkins "the most important of all Soviet wartime agents in the United States." The "Agent 19" described in Venona decrypts as meeting secretly with Churchill seems nobody but Harry Hopkins.

Romerstein and Breindel are even bolder in their treatment of Oppenheimer, the father of the atom bomb who has been portrayed in books and films as a heroic figure and defended

Harry Hopkins and Stalin

Hulton-Deutsch Collection / Corbis

The Venona Secrets
Exposing Soviet Espionage and America's Traitors
by Herbert Romerstein and Eric Breindel
Regnery, 608 pp., $29.95

even by such staunch anti-Communists as the Alsop brothers. The loss of Oppenheimer's clearance as a security risk during the Eisenhower administration was widely condemned as McCarthyism.

The Venona files suggest but do not definitely prove that Oppenheimer collaborated with the NKVD. But Romerstein and Breindel are convinced by the testimony of Pavel Sudoplatov, the Moscow-based chief of atomic-bomb espionage, who fingered Oppenheimer in 1994. "We can say for certain," the authors write, "that Oppenheimer did in fact knowingly supply classified information on the atom bomb to the Soviet Union."

Such penetration by Soviet espionage was pervasive. Nathan Gregory Silvermaster, a middle-level bureaucrat who worked in several government agencies, ran a spy ring that included Chambers and Bentley—and that won him the Order of the Red Star and a place in the KGB Hall of Fame. The FBI and U.S. Army counterintelligence were suspicious, but were brushed off by Roosevelt administration officials. Robert Patterson, one of the celebrated wartime "wise men," pressed for Silvermaster's continued access to secret information. Lauchlin Currie—administrative assistant to Roosevelt and deputy administrator of the Foreign Economic Administration—told suspicious FBI agents that he "did not believe" Silvermaster was a Communist. But Currie was also a Soviet agent who reported to his Kremlin masters that the Americans were on the verge of breaking the Soviet code.

When foreign service officer John Stewart Service was arrested in 1945 for passing secrets to the pro-Communist magazine *Amerasia*, Currie went into action. He went to legendary Washington fixer Thomas Corcoran, who in turn went as high as Attorney General Tom Clark. The result: Service was not indicted, and *Amerasia* owner Philip Jaffe (a friend of Earl Browder) got off with a small fine. "The value to the Soviets of the *Amerasia* espionage operations, protected by corruption and special favors," Romerstein and Breindel write, "was grasped only after the decryption of the Venona messages."

Perhaps the most startling revelation is the thorough Soviet penetration of Wild Bill Donovan's Office of Strategic Services, forerunner to the CIA. Maurice Halperin, chief of the Latin American division, was an NKVD agent. So was Duncan Lee, Donovan's assistant who kept his spymasters informed of secret missions. The transmission of those secrets bore bitter fruit. "Non-Communist wartime operatives who had been recruited by the Allies in target countries now behind the Iron Curtain were ruthlessly hunted down and

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

exterminated," Romerstein and Breindel write, adding that it gave the KGB a "crucial advantage" early during the Cold War.

The Venona Secrets reveal successful efforts to infiltrate American journalism. Joseph Barnes, foreign editor of the *New York Herald-Tribune*, had a "long relationship with Soviet intelligence." Mary Price in 1944 was "assigned as an undercover Soviet agent" in Walter Lippmann's office, and the esteemed columnist's secretary supplied the KGB with his private files during the Cold War. David Karr, a well-known reporter for columnist Drew Pearson, was an agent who regularly handed information to Soviet intelligence (and, in return, apparently received military secrets for Pearson's column from Alger Hiss's office). Romerstein and Breindel leave no doubt about I.F. Stone, the leftist journalist still venerated by many liberals: "It is clear from the evidence," they conclude, "that Stone was indeed a Soviet agent." What's more, the Venona messages reveal he did it for money.

The journalist Eric Breindel, had he lived, would have smoothed out the final manuscript. The rough quality of *The Venona Secrets* makes it read a little like FBI raw files—though that, however unintentional, heightens the dramatic impact. My only real complaint with the book is the conclusion that Harry Truman was "a more effective foe of Soviet subversion" than Joe McCarthy.

In truth, McCarthy had nothing to do with the events revealed in this book. Truman was present for the final stage of massive Soviet espionage in Washington, and—contrary to their own conclusion—Romerstein and Breindel make clear that he did not distinguish himself. Truman ignored J. Edgar Hoover's advice and retained Harry Dexter White, an influential Treasury official he inherited from Roosevelt and a secret agent who pressed the Kremlin's policy at the highest level. The authors write that "despite FBI attempts to educate him, Truman paid little attention to Soviet spying in the United States."

Perhaps Truman would have done better had he been let in on the Venona secrets. In his 1998 book *Secrecy*, Daniel Patrick Moynihan revealed that the president was not informed because General Omar Bradley decided he had no need to know. "It is surely logical to suppose," Moynihan wrote, "that such a man would sense the political peril of a Communist espionage ring operating within his own government."

The Venona Secrets is a breathtaking exposé. The government of a great power was infiltrated by the ideological supporters of another great power, for the purpose of stealing secrets and influencing policy.

"Their loyalty was to a foreign power," the authors write, "and their goal was nothing less than the subversion and destruction of American democracy." ♦

Liberal Arts

Lynne Munson on the decline and fall of the National Endowment for the Arts. BY MARGARET HILDEBRAND

If you're not planning to send out Christmas cards this year decorated with the urine-soaked *Piss Christ* or the elephant-dunged *Holy Virgin Mary*—in fact, if you're appalled by most contemporary American art—then Lynne Munson's book, *Exhibitionism: Art in an Era of Intolerance*, is inviting. Back in a previous Bush administration, Munson served as special assistant to National Endowment for the Humanities chairman Lynne Cheney. Now a fellow at the American Enterprise Institute, she writes with feeling about the modern art "academy," which favors controversy over artistic worth.

Exhibitionism
Art in an Era of Intolerance
by Lynne Munson
Ivan R. Dee, 256 pp., $27.50

"The American art world of the 1970s and 1980s put a new spin on the idea of 'academic' art," Munson observes. "Suddenly, being shocking or offensive or just anti-art was the safest approach an artist could take. Painting figures, landscapes, or even just painting at all placed an artist on the margins of establishment taste." And this corrupt aesthetics, she argues, has been brutally imposed on all artists, museum patrons, and students of art history.

Margaret Hildebrand is a lawyer in Los Angeles.

Munson starts *Exhibitionism* with the promising idea of contrasting the artists given grants by the National Endowment for the Arts in 1966 (the first year of the NEA's visual arts program) with the artists given grants in 1995 (the last year before Congress cut funding for individual artists).

The 1966 grants were directed by Henry Geldzahler, an art curator, patron, theorist, and historian of impeccable taste and credentials. Under Geldzahler's guidance, panels of respected artists awarded fellowships to painters and sculptors with proven bodies of serious work. These panels, Munson notes, "stressed quite emphatically the need to deliver support only to artists of proven merit, whose seriousness and accomplishment was recognized by other visual artists. Their advice was to be discriminating and to avoid falling into the trap of funding anyone and everyone who claimed to be an artist." The 1966 grantees used their awards to continue serious work under reduced financial pressure.

The 1995 grants, however, were bestowed by panels composed of few painters, many administrators, and almost no one with serious credentials as an artist. Several grants went to per-

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

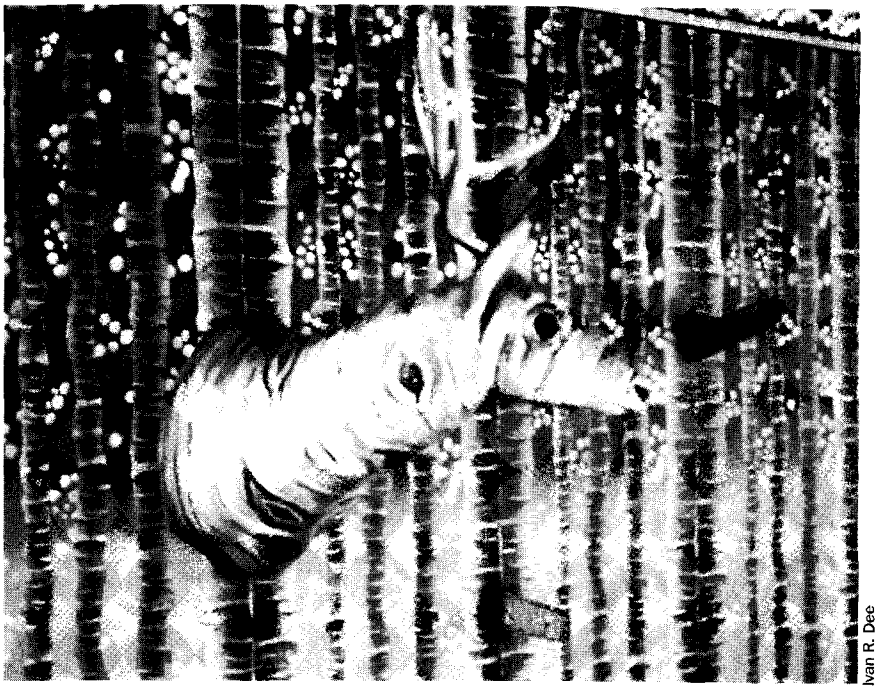
formance artists and visual artists whose primary goal was to advance political causes. Most grantees used their funds not to pursue their art, but to further their art careers.

Munson's snapshots of the 1966 and 1995 panels are quite entertaining. Unfortunately, this is as far as *Exhibitionism* goes. The reader is left with no real sense of exactly how the NEA declined—and how much negative effect that had on decent artists. Munson's review of the meritless art rewarded by the 1995 panel, for example, cites works done long before, or after, the NEA grants.

In only one case does she explicitly describe particular offensive work done with 1995 funds. Karen Finley, an NEA-financed performance artist who smeared her naked body with chocolate (and whom Munson quite rightly criticizes), has not received a grant since her 1990 application was rejected—despite her lawsuit against the NEA. Munson speaks of the appalling *Public Cervix Announcement* that Annie Sprinkle performed in 1990 not at The Furnace (as Munson says) but at The Kitchen, which was not then receiving NEA grants.

Of course, our instincts tell us that Munson is right about the conclusions she wants to draw: There's that feeling of weary indignation you get looking at Robert Mapplethorpe's homoerotic photographs, for instance, and that gloom of exhausted outrage you feel when you read in the newspaper that Karen Finley has opened yet another easy-pour bottle of Hershey's chocolate syrup.

But then, anyone—except, of course, the doyens of contemporary American art—can recognize what's wrong with works like *Piss Christ* and *Public Cervix Announcement*. They're offensive, blasphemous, and very, very tired—perhaps most shocking in their belief that they're doing something new by being shocking. What we need from a book like *Exhibitionism* is instead an explanation of the standards by which we ought to judge this junk as worthless, and, by extension, real art as worthwhile.



Ivan R. Dee

A portion of Malinda Beeman's Tree Wall (Winter), *from 1996.*

Munson does give some hints. One can infer from her criticisms that good art is not "amorphous" or "trivial." It never "sublimates aesthetic concerns to the demands of a social critique." An artist should not treat "aesthetic concerns as below contempt" or "substitute cleverness for visual interest."

Still, these hints are insufficient help for a viewer confused about why we should reject the hype surrounding much of the contemporary art scene but accept, for instance, Munson's praise for Malinda Beeman's *Tree Wall (Winter)*—a work that combines a taxidermist's deer, ceramic chainsaws, and undulating tire tracks the artist finds "both ominous and 'kind of beautiful.'"

What makes *Exhibitionism* worthwhile is the fact that it is not simply another culture-wars book. Munson does effectively notify us that the American art scene is polluted by an intolerant, undignified, and repulsive academy. But she also has a strong sense—which, one sometimes feels, many culture-warriors do not—that there is finally such a thing as good art and it may be the duty of an affluent society to help support it. One longs to have Munson explain exactly how the new academic art failed to deliver what her idol Henry Geldzahler called "the shock of quality, that instantaneous weakness, that breathlessness that we feel when in the presence of something that is absolutely right."

Elsewhere, Munson has written that big popular exhibitions "serve a public purpose—they bring high-quality art to masses of people." But in *Exhibitionism* she seems at times to give up on the ability of ordinary Americans to arrive at the breathlessness Geldzahler described. She excoriates Nixon's NEA chairman, Nancy Hanks, for extending NEA grants to American crafts. Geldzahler is praised for running his visual arts panel as "an elite private institution." Modern exhibitions are attacked because museum entrances are no longer difficult to climb up. (Apparently Munson has not mounted the entrance to the Getty: Talk about breathless!)

So, what can we as ordinary taxpayers and citizens do both to abolish the contemporary academy's junk and to foster worthy art? *Exhibitionism* offers a fascinating intermittent look at such things as the National Endowment for the Arts from 1966 to 1995, at the museum reorganizations in the 1970s and 1980s, and at the implosion of Harvard University's art department. But what now? We can only wait for Munson's next book, which must not merely recount anecdotes of the academy's vile past, but also instruct us how to change things in the future. ◆

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

Not a Parody

Gore backers, unhappy that his former lawyer Laurence Tribe had called on Gore to concede, called attention to Tribe's website, www.thetribes.com.

—*News item*

Netscape: I'm Larry

Back Forward Reload Home Search Netscape Print Security Shop

Location: http://www.thetribes.com/larry/larry.html

www.thetribes.com

Hi! I'm Larry.

I've written about, taught, and practiced constitutional law for many years, having joined the Harvard law faculty in the fall of 1968, just before I turned 27. In a future life, I think I might try astronomy or astrophysics, or maybe even pure math, which was my favorite subject in college and grad school. I still love reading about the search for a unified TOE ("theory of everything"), although I can't really pretend to know a superstring from a supernova. Stuff about black holes interests me, in the end, more than stuff about corporate (or even, at times, constitutional) law. But law too has its deep structures and amazing symmetries, and I find an elegant constitutional argument almost as inspiring as an elegant mathematical proof. I do despair, though, of ever discovering eternal truths in the social sciences, and when I'm in a truth-obsessed mode, I despair of ever finding in the world of law any proposition half as remarkable as, say, the fact that:

e to the i Pi = -1

I love brilliant magenta sunsets, unagi, Martin Amis' "Time's Arrow," the fish tank at MGH, T.S. Eliot's "Love Song of J. Alfred Prufrock," eating, my stairmaster, looking at the ocean, dreaming about impossible things, New Yorker cartoons, the twist in a short story, **The Hotel New Hampshire**, good (and even not-so-good) movies, re-reading **The Great Gatsby** and **Ethan Fromme**, and Monet and Vermeer. I particularly like Bellini's "St.Francis of Assisi" at the Frick in Manhattan. I love Mozart, Simon & Garfunkel and Joan Baez, who played at the Mount Auburn Club in 1961. I have been having a great time (after much initial hemming and hawing) with my PC and even my Zaurus and would love to see what's wrought by science and technology over the next couple of centuries.

I'm something of a political news junkie, but I am fairly disillusioned with politics in the 1990s. I am nonetheless anything but apolitical (although my legal views are much less result-oriented and certainly less politically driven than some people seem to suppose). Having said that, I should stress that I despise injustice and human suffering and want to do my part to help overcome both, but, in the end, I think I can do more through seeing connections and deepening people's understanding than through direct service. That's why teaching and working on the third edition of my treatise, **American Constitutional Law**, due out in the year 2000, mean a lot to me.

Nothing means more to me, though, than my kids Mark and Kerry, and my wife Carolyn. I love them all more than life itself. And, as for life, sometimes I love it, and sometimes, frankly, I don't.

My Curriculum Vitae | Send me mail

the weekly Standard
December 25, 2000

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED

The Decline of Defense Spending

Peter Schweizer is a research fellow at the Hoover Institution.

President Clinton recently announced that the United States was enjoying a record $237 billion surplus for the budget year that ended September 30. President Clinton took credit for the numbers and declared that, together with Vice President Gore, "we turned that around—not by chance, but by choice." What was once a budget deficit has indeed turned into a record surplus. But the reason for it has less to do with Clinton administration policies than with America's post–cold war peace dividend.

Beginning in the early 1950s and throughout the cold war, America spent on average 6–8 percent of its gross national product (GNP) on defense, regardless of whether a Democrat or a Republican was in the Oval Office. It briefly dropped slightly below 5 percent in 1977–78 only to rise again.

With the end of the cold war, defense spending declined dramatically beginning in 1990. By 1996 it had dropped to 3 percent of GNP and today is even lower. **The United States is now spending less on defense as a percentage of GNP than anytime since the Great Depression.**

What if there had been no peace dividend? What if the cold war had not ended? If the United States were still funding the armed forces at cold war levels, the fiscal year 1999 authorized $270 billion defense budget would need to double. The current budget surplus would evaporate and be replaced by a deficit. No doubt, the strong economy has helped reduce the deficit. But there is no escaping the fact that **it is the end of the cold war that is largely responsible for today's rosy financial picture.**

America no longer needs a cold war–level defense budget. But there is plenty of evidence that defense cuts have gone too far. There are ample reports of spare parts shortages and cutbacks in training due to concerns about cost. It is also increasingly difficult to retain quality officers and senior enlisted personnel. In part this reflects the hot civilian job market, but surveys also indicate that frustration is high and morale is low in the armed forces.

The new administration needs to immediately ensure that our armed forces remain a fighting force without peer. But at the same time investments need to be made to prepare for the wars of tomorrow. Research and development in the defense arena requires a long lead time. We need to fund research projects that will provide weapons for our soldiers fifteen years from now.

Before Washington contemplates spending the surplus on other government programs, it needs to look at adequately funding the one government program that faced substantial cuts in the 1990s—the military.

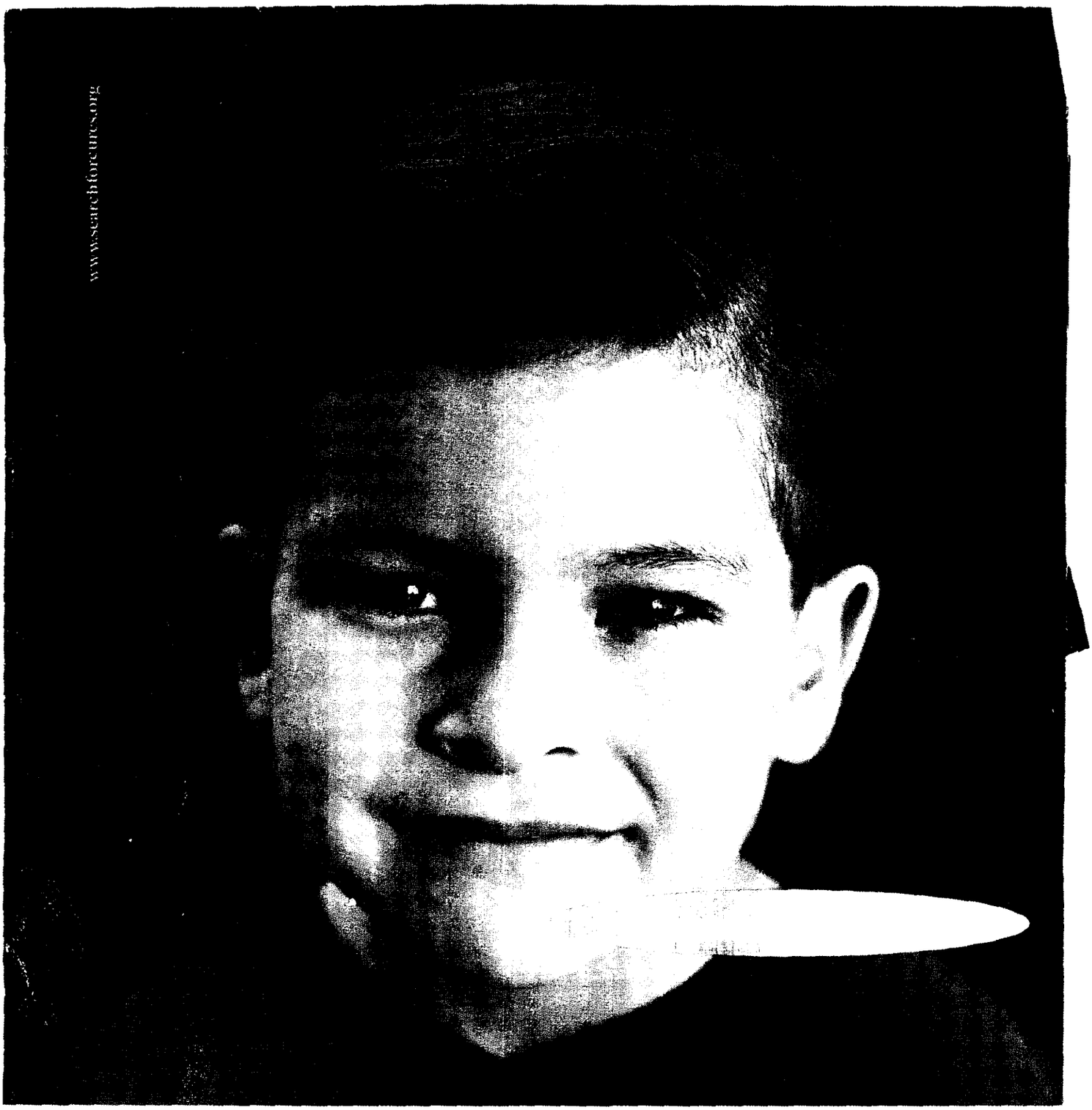
— Peter Schweizer

Paid for by the Hoover Institution, Stanford University.

Interested in more commentary on public policy?

Visit us on-line at **www.hoover.org** *or contact us to receive a complimentary copy of the 200-page, award-winning* Hoover Digest.

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED



It's the face of Jeremy Gutierrez — skateboarder, bike rider, rollerblader, kid. It wasn't always that way. Like five million other children with asthma, Jeremy was forced to live an overly protected life due to fear of attacks. And when attacks did come, they often meant being rushed away from friends and family into the fear and trauma of the emergency room. Today, America's pharmaceutical companies are discovering medicines that help kids like Jeremy stay healthy, stay in school, and stay out of hospitals. Pharmaceutical company researchers are working hard to discover breakthroughs that will help make many illnesses and diseases a thing of the past and bring more patients new hope for a better tomorrow. Thanks to new medicines discovered by these researchers, today, Jeremy has a life like any normal six-year-old — a life full of curiosity, full of wonder and full of health.

America's Pharmaceutical Companies

Leading the way in the search for cures

LICENSED TO UNZ.ORG
ELECTRONIC REPRODUCTION PROHIBITED